A NEW DODGE IN TAXES **JONATHAN ROWE**

THE NATION

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THE RIGHT TO BE OFFENSIVE
SKOKIE: The Extreme Test Of Our Faith in Free Speech

ARTHUR SCHLESINGER'S NEW DEAL FOR CARTER
John Rosenberg

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EDITORIALS

Freedom Plays No Favorites

Some years ago when Alvah Bessie, one of the original Hollywood Ten, summed up his life as a subversive in a memoir called *Inquisition in Eden*, he appeared to favor free speech for everyone but Fascists. And when a reviewer asked whether this wasn't a dubious principle, since political pariahs have a way of changing with administrations, Bessie replied, "I am for free speech for everyone except those who would exterminate me. I have the right not to want to be exterminated, don't I?"

The issue, which goes back long before Milton, who advocated free speech for everyone but Catholics, is not exactly new. Just the other night Vanessa Redgrave muffed her chance to elucidate the free-speech principal on the occasion of her receiving an Academy Award for Best Supporting Actress as the anti-Nazi heroine of *Julia*. Miss Redgrave's candidacy had drawn attacks from those who wanted her disqualified because she had participated financially and artistically in the documentary film, *The Palestinians*. Especially since *Julia* was based on a short story by Lillian Hellman, herself a victim of the cold-war anti-Communist hysteria, one would have thought it an appropriate moment to reflect that perhaps Hollywood had at long last learned the lesson of how dangerous it is to blacklist people for their political activities. Indeed, Miss Redgrave seemed to be saying something of the sort when she threw in a denunciation of "Zionist hoodlums," an ambiguous reference—perhaps to the Jewish Defense League picketers who were exercising their own free-speech rights outside the Los Angeles Music Center; which in turn prompted the writer Paddy Chayevsky to suggest that perhaps her polite "thank you for the Oscar" would have sufficed.

The dialogue continues. Even as Hollywood wrestles with its conscience, the President and the Attorney General have gone to court to try to punish former CIA employee Frank Snepp for publishing his Vietnam exposé, *Decent Interval*, without CIA clearance. If the Justice Department wins its case, argue Snepp's lawyers, any federal employee could be forced to surrender to the censors his conscience and his First Amendment rights. As Snepp's publisher, Robert Bernstein, chairman of Random House, observed, "One must ask what would be known today about Watergate, My Lai and self-dealings at the highest levels of government, including the FBI, if that standard [prior government clearance] governed the flow of information to our citizens. How many more decades would we have to wait to learn about such illegal activities of our public servants as burglaries, assassination plots, wiretaps, mail openings and mind-control drug experiments?"

Traditionally, the frontiers of the First Amendment have been the province of libertarian lawyers doing battle against the state and its surrogates, who generally invoke the imperatives of security and/or order as reasons for cutting off the free flow of ideas.

On p. 422 of this issue, however, Carl Cohen, a philosopher by training and civil libertarian by commitment, tackles the hardest application of our loftiest principle—the First Amendment rights of Nazis. His Socratic discussion wins our Oscar for best-supporting argument for a simple conclusion: It is not Nazism that is at stake in Skokie, Ill.; it is free speech.

Less Is More Secure

The mushroom-shaped cloud hovering spectrally just off the world's stage has been shrinking a bit lately. But its friends, who look on nuclear weapons as protection instead of threat to our own safety, are fighting to put it back in fighting trim.

President Carter, according to *The New York Times*'s lead story on April 4, has decided against producing the neutron bomb (which can be fired from artillery pieces and is thought to be a magical counter in Europe to the Soviet Union's conventional ground superiority). The decision, if it is that, comes as a surprise. It had been widely assumed that Carter would show no dovish propensities in any defense area at least until the Panama Canal treaties were through the Congressional locks.

But now, we are told, the President has decided to hold back, if not altogether abandon, the "enhanced radiation" weapon that kills men in a limited battlefield space and spares the surrounding people and property. One can only speculate on Carter's reasons for this decision. A government official told the *Times* that "some deeply held convictions" of the President played a large role in making up his mind to abandon the neutrons as weapons. Dare we think that some of Carter's passionate campaign declarations in favor of arms reduction and even elimination have rekindled in his breast? Having thrown overboard so much of his campaign baggage of promises, does this one still haunt him?

It is too early to tell how much faith should be put in such a hope. And there are technical and political reasons that would account for at least a hesitation on his part before proceeding with the neutron weapons system. One of them is that, although the defense establishments of our NATO allies are all out for the neutron, their governments have tended to hang back before approving this "easy" way out of an adequate conventional defense system, one that would match the Warsaw Pact forces man for man and tank for tank. Instead, our European allies have favored an American decision to go ahead with production of the neutron weapons (thus letting us assume the political and moral risks inherent in that decision), while leaving the matter of actual deployment to the future. Deployment of these equalizing man-killers would follow another try at negotiations with the USSR on the whole question of force levels in Europe.

The reason for not following this course, plainly apparent to everyone but soldiers discouraged by politicians who won't raise enough troops, is that the neutron bomb would drastically lower the world's nuclear threshold. That is, it appears to be tactically usable without necessarily triggering the ultimate strategic exchange of the city busters. It therefore makes nuclear weaponry that much more employable and allows NATO to continue its halfhearted mobilization policies.

To this, the unprovable but convincing answer must

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CORRECTION

In Victor Navasky's review of Allen Weinstein's *Perjury* [*The Nation*, Apr. 8], the word "extensively" was omitted from the following sentence, which should have read: "Weinstein cites but does not quote extensively from an eloquent 2-page letter Field wrote Hiss after he got out of prison. . . ." —*The Editors*

be that the use of any nuclear weapons would inevitably uncork the bottle and let loose every form of destruction. This is not scare talk but plain sense. The Russians do not yet have the neutron in their arsenal. But, as the Union of Concerned Scientists reminds us in a statement printed in the March *Bulletin of the Atomic Scientists*, the average time lag before the USSR has "responded" to American technical innovations (which means, crudely, duplicated) has been four years. The neutron bomb is one "bargaining chip" in our dealings with the Soviet Union that is stronger unbuilt and undeployed than if it were an ominous reality.

All this is happening against a curious backdrop of conflict within the Carter administration on matters of arms and disarmament. The newspapers are full of hooded reports of clashes between Secretary of State Vance and Secretary of Defense Brown over a proposal Vance dared to forward to the President that would have the United States call for a worldwide ban on the production of material for use in nuclear weapons. Brown and his generals are apparently outraged that the Secretary of State presumed to send along this notion to the President before they had a chance to tear it to ribbons.

This conflict is more than just a bureaucratic fight over sequential "input." It is another signal in a long series that the military mind is still in its deep old grooves. It is up to the President to resolve this dispute in the national interest. His hesitation over the neutron bomb is at least an augury that he may decide this and other questions of the national security on grounds other than bowing to the military's usual cry of "more, more."

Lance the Loser

President Carter wants to be nice to the Arabs. They sell us oil (let's forget the price) and they can make life difficult or impossible for our friend, Israel. But he has to draw the line somewhere and it seems to have bisected the comfortable middle of his buddy, Bert Lance.

The former director of the Office of Management and Budget has had to turn in Diplomatic Passport X-000065, a document that gave him entree to Arab banking circles. Furthermore, *Time* reports (April 10) that Lance was called onto the carpet of Hamilton Jordan's White House office and told to get lost, at least until he could pull up his financial socks. The session between the two Georgians was apparently so stormy that Lance may have had to turn for comfort to his wife La Belle's book, *This Too Shall Pass*. It is an inspirational work by all accounts, especially the author's.

Lance is threatened from all sides. He is being sued by the SEC, among others, for joining his Arab cronies in a secret, therefore illicit, attempt to take over a bank-

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ing corporation. The federal scrutinizers are still trying to unravel the consequences of his wild ways with loans in his Georgia banking days, and there is talk of prosecutions to come. His personal debt structure rivals the World Bank's in complexity.

He may still get out of it all with a whole skin but it seems likely that the President will never again say the memorable words "Bert, I'm proud of you," as he did after Lance's Senate testimony last year. The freeze is on Bert Lance and it's getting deeper. High time.

'If FDR Were Alive Today . . .'

John Rosenberg

"It ill behooves one who has supped at labor's table . . . to curse with equal fervor and fine impartiality both labor and its adversaries when they become locked in deadly embrace." Thus spoke an angry leader of the United Mine Workers, complaining about the President's stand on the strike. Although this complaint sounds like just another refrain in the rising chorus of accusations that Carter has abandoned the traditions and even the constituents of the Democratic Party, in fact the statement was made by UMW President John L. Lewis, and the target of his scorn was Franklin D. Roosevelt.

Lewis's comment does not answer Carter's critics, but it should remind us that the New Deal was both more conservative and less perfect as a model for our times than many disgruntled Democrats now believe. Last month in Washington, for example, Prof. Arthur Schlesinger, Jr.—that weather vane of which way the wind is blowing in liberal circles—called for a revival of "the spirit of the New Deal." Speaking to a gathering of old New Dealers who were celebrating the 45th anniversary of the beginning of Roosevelt's first term, Schlesinger measured Carter against a larger-than-life picture of FDR and found him sadly lacking in "vitality" and "administrative drive." When *The Washington Post* ran Schlesinger's speech (March 12), the same verdict was announced in an accompanying sketch: a worried, drawn Carter is shown overshadowed by the jaunty silhouette of the squire from Hyde Park.

Professor Schlesinger has always written as he votes, and this lively partisanship endows his prose with a bite and timeliness that is usually absent from the work of his more academic colleagues. And yet his partisan parlor game (it used to be called "If Lincoln Were Alive Today . . .") can also be troubling—not so much because of its anachronistic transporting of people from one period to another (attempting to determine, say, Andrew Jackson's advice about Vietnam, a question that Professor Schlesinger's own reversal would leave in some doubt) or its lack of the overrated quality of objectivity, as because it is inherently unfair to players from both past and present. Let us then examine the current contest to determine how well Schlesinger scores in his effort to demonstrate that Carter's Presidential feet are too small to fill Roosevelt's shoes.

First, what New Deal programs is it claimed that Carter should emulate? The answer is hardly self-evident, especially since Schlesinger himself quickly points out that "Programmatically the New Deal was experimental, contradictory, chaotic, sometimes incoherent." Perhaps it is meant only that Carter should steal a page from FDR's book of style, that the affable politician's affinity for action—any action—is preferable to the engineer's caution. As Schlesinger approvingly quotes FDR: "Above all, try something." But many contemporaries and historians of the New Deal have concluded that it was characterized more by frenzied motion than forward movement. Benjamin Stolberg and Warren Jay Vinton wrote in 1935: "Its whole program is in essence nothing but a well-intentioned synthesis of errors. What it accomplishes in one direction it undoes in another. It is like the Russian peasant who cut some cloth from the front of his pants to patch the hole in the seat; and then cut from the leg of his pants to patch the front. After repeating this operation a dozen times he wound up, very much like the New Deal, with his pants all in patches and the migratory hole still there."

Although Schlesinger would perhaps characteristically dismiss these critics as merely ideologues of the Left, he can hardly say the same of similar comments by the pre-eminent philosopher of American liberalism, John Dewey. Disenchanted with the New Deal, Dewey wrote that the "Experimental method is not just messing around nor doing a little of this and a little of that in the hope that things will improve. Just as in the physical sciences, it implies a coherent body of ideas, a theory, that gives direction to the effort." In short, he announced in a lecture at the University of Virginia, "liberalism must now become radical. . . . For the gulf between what the actual situation makes possible and the actual state itself is so great that it cannot be bridged by piecemeal policies undertaken *ad hoc*."

Schlesinger assures us that "New Deal experimentalism was informed by a unifying vision . . .," but unfortunately we are never told what that vision was. Instead, we are given three "characteristics": "intellectual vitality"; a concern for "ordinary human beings," and a "readiness to act." It is here that Schlesinger's indictment slides from partisanship to polemic, for in order to belittle Carter he magnifies Roosevelt, distorting the record in the process.

He states, for example, that FDR was "a budget-balancer at heart, but he refused to balance the budget at the expense of the deprived and desolate; he refused to sacrifice human beings on the altar of abstractions." Conveniently buried in this avalanche of praise are the terrible consequences of the retrenchment Roosevelt ordered in 1937. "In June 1937," writes Prof. William

John Rosenberg's biography of Clifford Durr, written on a grant from the Rabinowitz Foundation, will be published by Harper and Row.

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E. Leuchtenburg of Columbia, perhaps the most judicious student of the period, "Roosevelt, inordinately worried about the danger of inflation, slashed spending sharply. He cut WPA roles drastically and turned off PWA pump-priming. At the very same time, Washington collected $2 billion in new Social Security taxes. The government had not only stopped priming the pump but was even 'taking some water out of the spout.'" What followed has been described by Prof. Paul Conkin as "the most precipitous economic decline in American history. . . . A lag in resuming relief created almost as much dire suffering as in 1932."

Completely cutting free of the historical record, Schlesinger next assures us that FDR "did not pursue the mirage of 'business confidence'. . . . The Roosevelt White House would hardly have rejoiced if the presidents of Du Pont and General Electric approved its economic policies; in New Deal days, such approval would have properly called not for celebration but for re-examination." Which days were those? Surely the author of *The Coming of the New Deal* has not altogether forgotten that the support of big business was sought—and received—for the National Recovery Administration, the major economic effort of FDR's first term. Indeed, as Schlesinger himself wrote in that revealing book, "business leaders—especially Henry I. Harriman of the Chamber of Commerce and Gerard Swope of General Electric . . . —were calling for national economic planning through the trade associations," which is precisely what the NRA provided. "Not since World War I had businessmen descended on Washington in such multitudes," writes Prof. Ellis Hawley, "and never, not even in the days of Herbert Hoover, had the Commerce Building witnessed such business-government cooperation." And yet there is no record—in Schlesinger's book or elsewhere—of any "re-examination" caused by this big-business approval of White House economic policies.

Finally Schlesinger, like Sherman laying siege to Atlanta, draws up the heavy artillery and fires off a deadly barrage of rhetorical questions: "Can anyone imagine a Roosevelt sitting tranquilly in the White House today for more than a year yearning to win business confidence and to balance the budget while urban America sinks ever more deeply into a slough of rot, confusion, social tension, fiscal disorder? While rural America is in revolt? While inflation and unemployment continue at intolerable levels? While the evils of racial injustice persist across the land?"

By now it may not come as a surprise to discover that the answer must be something less than a resounding, unanimous "No!" FDR did initially and recurrently seek business confidence; it took a rural revolt of his own—and the radicals he finally fired from the Agriculture Department—to force his administration to do more than plow under the crops and displace the sharecroppers; massive unemployment did continue until the outbreak of World War II; and as for racial injustice, FDR was so eager to appease Southern conservatives that he even refused to support legislation against lynching and the poll tax!

Professor Schlesinger does admit that "FDR did not solve the equivalent problems of his own time." Where, then, are the lessons Carter so willfully ignores? If he were suddenly immersed in the river of Democratic traditions and came up a born-again New Dealer, what would he do? Here we come to the heart of the matter, for Schlesinger's answer is, in its own way, perfectly clear: he would *act*. He would, as FDR used to say, "try something." Exactly what he should try is never stated, but one thing is certain: no matter what he chooses to do, he should do it quickly and with a great flurry of "experimentation." Above all, like Teddy Roosevelt, he should lead the charge. Presidents, says Schlesinger, "must know where they want to go—and they must carry their people with them."

This continuing enthrallment to Presidential action is one of the most damaging legacies of 20th-century liberalism. It is especially surprising coming from a historian whose last lesson for us—*The Imperial Presidency*—warned of the dangers arising from the worship of Presidential power. Truman knew where he wanted to go, and he took us—a few of us kicking and screaming—into the cold war; Kennedy and Johnson knew where they wanted to go, and they took us into Vietnam; Nixon knew where he wanted to go, and he almost took us for everything we have. Haven't we been taken enough by this fetish for the strong leader?

I intend no blanket criticism of FDR and his followers (indeed, I am currently writing a biography of one of the most impressive of them, Clifford Durr), and the old New Dealers in Professor Schlesinger's audience have much to be proud of. Nevertheless, the fact remains that, despite the energy and idealism and "fresh thinking" that so many people brought to FDR's administration, despite the vaunted "experimentation" and "innovation," the central thrust of the New Deal never strayed far from the accepted verities of the "vital center." And in any event, whatever the final verdict on the New Deal, surely we deserve more from Professor Schlesinger than polishing the halo of an old President (and covering up the dark spots) in order to tarnish the image of a new one.

It is true that President Carter has disappointed many of his supporters, and it is also true that there is much his administration could learn from the New Deal—more perhaps from its failures than its successes, from the paths not taken than those that were. It may well be that all our system will allow is a pluralist at the center juggling interest groups and greasing only the squeakiest wheel, but even within those narrow confines Carter, like Roosevelt, has more room to maneuver than he has chosen to use. He is right, however, to pay little heed to the highly selective lessons that Schlesinger, the disaffected court historian of former Presidents, would teach. Above all, he should not attempt to imitate Roosevelt. Some, in fact, would say that he has already emulated Roosevelt's indirection and entrapment in the vacuous center for too long.

Perhaps no future historian will choose to write *The Age of Carter*, but if we are lucky that may signify not the failure of leadership but the success of the very kind of leadership he was elected to provide. □

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THE RIGHT TO BE OFFENSIVE

SKOKIE—THE EXTREME TEST

CARL COHEN

"Hard cases make bad law" the saying goes. Perhaps. But good principles are rightly tested by extreme cases. The principle that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ."—than which we have few better—is perennially tested by American Nazis.

The skeletal facts of the latest test are these: The National Socialist Party, under the leadership of Frank Collin, planned public demonstrations in April 1977, in the parks of suburban Chicago. The Village of Skokie, 4 miles north of the Chicago city line, blocked the demonstration within its borders by requiring the prior posting of $350,000 insurance. The Nazis persisted, announcing their intent to march without speeches aimed at any ethnic or racial groups and without distributing literature, but in uniform and with signs and swastikas. Skokie (nearly 60 percent Jewish) then won a court injunction prohibiting the Nazis from displaying their uniforms or swastikas, or disseminating literature, on the date planned. The American Civil Liberties Union, representing the Nazis in this matter, sought but did not get a stay of that injunction from the Illinois Appellate Court. The Illinois Supreme Court refused to hear the case, and the ACLU appealed to the U.S. Supreme Court for a stay of the injunction. That petition was treated by the Supreme Court as one requesting a review of all procedural issues in the case, and granted it, ordering the Illinois courts to respond.[1]

Meanwhile, three new ordinances were adopted by the Skokie Village Council, having much the same effect as the injunction at issue. The first requires a permit for any demonstration of fifty or more persons in the streets or on the sidewalks of Skokie. The second bans "political organizations" from demonstrating in "military style" uniforms. The third bans both the display of "symbols offensive to the community" and the distribution of literature that ascribes a "lack of virtue" to racially or ethnically identifiable groups. Concurrently, a small group of Jews living in Skokie, acting independently of the village and the park district, seek a separate injunction against any Nazi demonstration because of the injury it would allegedly do to them.[2]

Citizens on both sides of the controversy are outraged. Is this a hard case? The ACLU does not think so—but by defending the right of the Nazis to demonstrate it has lost some 30 percent of its Illinois membership in a matter of months. The arguments on both sides are more tangled and subtle than is commonly supposed. In the end, however, the ACLU is right: it is not Nazism that is at stake, but the freedom of speech.

Those who would block the Nazi demonstration are not insensitive to the constitutional protection of free speech. They say, in effect: "The freedom of speech—which we honor as fully as does the ACLU—is like every freedom in having limits in a good society. Defenders of free speech who retain their good sense will realize that Nazis, saying what they say in the way they say it, do exceed reasonable limits. Associating themselves with the literal annihilation of millions of Jews, they now seek to advance their views abrasively in a community populated by many of the very same people who had been tortured by Nazis. Some of these Jews, after narrow escape, have sought refuge in Skokie. We applaud the vigorous defense of controversial speech, but this is a case—given the character of these Nazis and their expressed intent—to which the constitutional protection of dissident opinion does not apply."

This general position of those who would forbid the Nazi demonstration is not sufficient as it stands. Certainly it is true that neither the First Amendment nor any sensible principle lying behind it guarantees the right to say anything, anywhere, at any time. But restrictions upon speech and assembly—especially any that would silence representatives of a political party in a public place with a public aim—must be very narrowly drawn, and face a heavy burden of justification. The task of the Nazi blockers (not "anti-Nazis" because that group surely includes most of those defending the right of Nazis to demonstrate) is to give sound argument specifying the proper limits of free speech that would be exceeded by this demonstration. Every effort to do this while preserving the basic constitutional liberties in question fails, as I shall show.

Grave danger is one limit upon speech thought reasonable by many. Justice Holmes wrote in 1919: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring

[1] On the narrow question of whether an injunction prohibiting the use of the swastika violated the First Amendment rights of the Nazis the Illinois Supreme Court did respond in January 1978. The injunction was struck down. The Court wrote: "The display of the swastika, as offensive to the principles of a free nation as the memories it recalls may be, is symbolic political speech intended to convey to the public the beliefs of those who display it."

[2] That private action the Supreme Court of Illinois ordered dismissed, and the appeal for rehearing has been denied. But the Anti-Defamation League of B'nai B'rith, supporting that private suit, has promised further appeal to the U.S. Supreme Court. The three village ordinances were declared unconstitutional by the Federal District Court in February; but on March 17 that court granted a forty-five-day stay of its own order, as a cooling-off period and to permit the village to appeal the ruling to the 7th Federal Circuit in Chicago. That appeal has been scheduled for late May. The stay (temporarily keeping the ordinances in force) will probably be extended until the 7th Circuit Court reaches a decision on the merits. If that court affirms the District Court (at least on the first two ordinances) the Nazis may march lawfully in late May or June—unless the U.S. Supreme Court grants a further delay.

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about substantive evils that Congress has a right to prevent." [*Schenck* v. *United States*, 249 U.S. 47 at 52.] The Village of Skokie applies essentially that standard. It says that the evils of violence resulting from the demonstration are sure, the danger of them patently clear, and (were the Nazis to march) immediately present. Holmes's justly famous illustration makes the point vividly: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic." Nazis waving swastikas in a mainly Jewish community, say the people of Skokie, are in effect shouting fire in a theatre. That irresponsible use of speech we are not obliged to permit; neither the shouter in the theatre nor the Nazi in the street is entitled to the constitutional protection of free speech.

The analogy is seriously flawed. Whoever falsely shouts fire in a theatre is certainly not entitled to free-speech protection. But the circumstances of a Nazi demonstration differ from those of the theatre in three fundamental respects.

First, the theatre audience is captive, subjected against its will to the shout and its sequel. Not so any gathering for a Nazi parade or demonstration. Those angered or offended are free to stay away, or to leave; they need have nothing to do with the affair. The panic in the theatre traps and injures those present for reasons entirely unrelated to the shout: that false alarm is not essentially speech at all; it is no different from the fraudulent ringing of an alarm bell. Of the audience any Nazi march may draw, all this simply cannot be said.

Second, the shouted warning is of such a nature that it permits no discussion. It is not the expression of an opinion but a signal for flight, giving no opportunity for reasoned reply. The Nazi demonstration may be answered with counter-demonstrations; it may be refuted, in print or by voice; then or later. Nazi demonstrators offer no threat of immediate calamity comparable to that of a false alarm in a crowded hall.

Third, the alarm in the theatre is, by hypothesis, false; we would think very differently of an honest warning. Nazi views are also false, no doubt, but being right is not a condition on which permission to demonstrate may be premised. Who should have that permission if it were? And who decide?

Some words, in some special circumstances, because of the grave danger they immediately create, cannot claim the protection of free speech. Shouting fire falsely in a theatre is one such case; a political demonstration in a park, by Nazis or anyone else, is not.

"But," rejoins the Nazi blocker, "you underestimate the seriousness of the threat this demonstration immediately creates. If the Nazis march in Skokie with swastikas and brown shirts they will almost certainly provoke a riot. Incitement to riot is a crime. When it is deliberate, as in this case, when its violent consequences are highly probable and fully anticipated, such incitement cannot be defended as mere speech. It is conduct designed to breach the public peace, using the First Amendment as shield. Skokie has the right, even the duty, to protect itself against the threat of that despicable design."

This dangerous argument seriously misapprehends the concept of incitement to riot. The fact that a message or symbol excites an audience to furious antagonism gives no evidence whatever of criminal incitement. That crime consists in urging upon one's audience the commission of some unlawful act in a context in which it is probable that some in the audience will do what is being urged. Even then the speaker will not normally be guilty of criminal incitement unless persons in his audience do in fact engage in the unlawful conduct he urged upon them. Nothing like those conditions is present in this case. Nazi speakers shrewdly plan to urge nothing explicitly unlawful. ("Free speech for the white man" was their announced slogan for this occasion.) They urge no specific acts at all, certainly no illegal ones. In a fury directed at the Nazis, some in the Skokie audience may subsequently break the law—but those whose symbols provoked their fury cannot be legally responsible for the misconduct. In the interests of freedom, incitement must be very narrowly delineated. When overt unlawful deeds are committed as a direct consequence of agitating speech, that speech becomes part of the crime—as the planning of an actual robbery becomes part of that robbery. Persons whose inflammatory words lead immediately to the disorder they propose may be similarly culpable. But the Nazis, few of whose audience will be inclined to do anything they may urge, could never be guilty, in Skokie, of inciting to riot.

"Regarding the technical conditions for that crime you may be correct," the Nazi blocker continues, "but you are blinded by technicalities. The Nazis delight in creating fright and havoc among Jews. Recently in this country their demonstrations have several times actually resulted in riot. Nazis understand full well how maddening their symbols are to their intended victims; they plan that abrasion. It is a good principle in law that one may reasonably be held to intend the natural and expected consequences of one's acts. True, the riot will not be caused by an audience that complies with the urgings of Nazi agitators. The Nazis may thus be innocent of some narrowly defined crime of 'incitement.' They will nevertheless be guilty of engaging deliberately in conduct designed to infuriate and calculated to result in a wholesale breach of the public peace. From incitement in that more general sense we can and must protect ourselves."

This argument, having much prima facie appeal, is the one on which Skokie chiefly relies. But the village is profoundly mistaken when it assumes that speakers may be silenced because of the response expected to their words. If that were granted, no truly controversial position on an incendiary topic could be freely presented. When it could be shown that the probable reaction would be intemperate or disorderly, the advocacy of an un-

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popular position would have to be forbidden. Thus, tying the permissibility of controversial speech to its expected reception by an audience establishes what has been called "the heckler's veto." A society that honors freedom concretely cannot authorize that veto.

Very unpopular causes may be as freely advocated under our Constitution as those in popular favor. Aberrant political advocates, progressive or reactionary, wise or crazy, will commonly meet with an angry and unruly reception. Communists, pacifists, National Socialists —especially those on the extreme of any continuum— will be forever in need of defense. Their freedom is our interest not only because our side may one day meet similar response but because rational judgment upon any position requires that it be heard. Some lessons must be repeatedly relearned, even by those who once taught them. If the Nazis are not free to speak because their Jewish audience will be hostile, the Jews will not be free to speak when their Arab audience promises equal hostility. When demonstrations to which sufficient ire may be threatened are not allowed, the hecklers have a veto —and they have it whatever the content of their views.

The issue has been tested. A passionate message of racial hatred was delivered—also in Chicago, in 1949, by a Catholic priest under suspension—to a sizable audience in a large hall. Outside, a cordon of police struggled to control the infuriated counter-demonstrators, while Father Terminiello completed his speech. He was later convicted for creating a breach of the peace—a breach created not by him or his followers but by persons outside the lecture hall so maddened by his bigotry as to throw bottles and bricks at the windows as he spoke. Is Father Terminiello to be legally punished for speaking so? The judge in the trial court had instructed the jury that the words "breach of the peace" include speech that "stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance. . . ." That, said the Supreme Court, was grave error. Justice Douglas wrote the majority opinion: "[One] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." [*Terminiello* v. *City of Chicago*, 337 U.S. 1, at 4, 1949.]

The right of a racist to speak freely becomes a bulwark for all. Civil rights activists, convicted a few years later because of the tumultuous responses of their hostile audiences, had their convictions also reversed by the Supreme Court, relying on the *Terminiello* decision. Even in the most hostile territory the right to political agitation for all parties has been secured.

The case for the Nazis is stronger than that for Terminiello, whose angry opponents really did throw bricks. Nothing has been thrown at the Nazis in Skokie because they have not yet been allowed to speak there. The mere threat of disorder has served to silence political speech. An injunction based on that threat encourages continuing threats and further restrictions. Such prior restraint of speech is highly objectionable. It does not allow even for the test of the impact of that speech. In the *Pentagon Papers* case, the claim by the United States Government that publication of the papers would lead to loss of life in Southeast Asia was rightly rejected by the Supreme Court as ground for an injunction prohibiting publication in advance. Should that Court tolerate an injunction forbidding in advance a controversial demonstration on domestic public affairs?

"They should even if they won't," replies the Nazi blocker, "when that speech has a very high probability of provoking violence. We cannot know with absolute certainty what the future holds; we cannot be absolutely sure that a riot will ensue if the Nazis parade with swastikas in Skokie. But we can be confident when we predict it. Some words and symbols, by their plain meaning in known contexts, are so provocative as to cause decent and reasonable people to respond by fighting. Speech like that is rightly forbidden.

"In this, the Supreme Court is on our side. A Jehovah's Witness named Chaplinsky, convicted in New Hampshire for shouting at a policeman, when stopped from preaching in the street: 'You are a goddamned racketeer [and] a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists,' claimed freedom of speech as his shield unsuccessfully. Some utterances, the Supreme Court said, are not entitled to normal protection. '[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting words"—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.' [*Chaplinsky* v. *New Hampshire*, 315 U.S. 568, at 572, 1942.]

"That fighting words should not be protected as normal verbal controversy," the blocker concludes, "is plain good sense. In a community where live thousands of survivors of Nazi death camps, an aggressive Nazi demonstration is surely speech which, by its very utterance, inflicts injury and tends to incite an immediate breach of the peace."

The argument fails utterly. The doctrine applied—that words themselves are sometimes to be treated as equivalent to the first physical blows in a fight—is highly suspect. What words under what circumstances may be treated so must be forever disputable. Words can hurt, but there is a difference between a verbal and a physical blow that metaphor must not be allowed to blur. If the words that sometimes provoke a fight are silenced,

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the general uncertainty about which words may have that effect must chill all debate, hedge all robust speaking in vigorous contest. The theory that nasty words justify immediate physical retaliation is a bad one—and, in fact, it is a theory now almost universally abandoned.

Even if accepted in the extreme case, however, the application of the "fighting-words" doctrine would have to be so narrowly restricted to special circumstances as to have no bearing on a proposed demonstration by Nazis. It could apply only to utterances by one person to the face of another, being defamatory in the extreme. Political demonstrations before a general public, however despicable the views presented, are not one-to-one situations. Moreover the doctrine could apply (if ever) only after those insults were hurled and a retaliatory blow struck—clearly not the present case. Above all, the "fighting-words" doctrine, if applicable in any context, would be so only as a consequence of some personal offense, never when the cause of agitation, however bitter, is political. The gambit cannot succeed.

"Yet we all know," the Nazi blocker rejoins, "that Nazi propaganda will be exceedingly painful in this context. The expression 'fighting words' may be inexact here, but it points to the heart of the case, the real ground upon which an injunction prohibiting a Nazi demonstration in Skokie is justifiable. The Nazis may or may not begin a fight, or incite disorder, or breach the public peace—but it is certainly the case that, if they march and speak, they will do severe and irreparable harm to a substantial number of Jews—refugees from the Third Reich—now living in Skokie.

"It is not the speech as such that we ask to have enjoined, but the deliberate injury of those living their post-Holocaust lives in mutual company and refuge. By demonstrating in storm-trooper style the Nazis will inflict—and seek to inflict—direct personal pain upon those who have once already been their innocent victims. The infliction of such injury no community is obliged to permit."

Of all objections to the Nazi demonstrations this is the most serious. It is advanced not by the Village of Skokie but by a small group of Jewish survivors living there, and it relies, sensitively, upon what appears to distinguish this case from all ordinary cases of controversial speech. Consider this argument in greater detail:

(*a*) "The atrocities to which the victims of the Holocaust were subjected cannot be captured in words. For the present it may be enough to say that the mother of one of the plaintiffs in this case was murdered by the Nazis, having been thrown into a well with fifty other women while alive, and covered with gravel. To the perpetrators of this and a thousand like crimes the American Nazis give proud allegiance."

(*b*) "Upon the few surviving victims the Nazis inflicted a psychological trauma so profound as to scar their lives forever. Overwhelming anxiety, recurrent terror, paralyzing helplessness, emotional anguish—all manifested not only in mental suffering but in physical pain and disorder—flow still from those cruelties. Nazi anti-Semitism cannot pass as ordinary political controversy."

(*c*) "The Nazis' specific intent to pursue the Jews taking refuge in America—to arouse and marshal hatred of them—was plainly announced in a leaflet they distributed just prior to the planned march:

> . . . we have decided to relocate in areas heavily populated by the real enemy—the Jews!
>
> An old maxim goes: "Where one finds the most Jews, there also shall one find the most Jew-haters." With this basic truth in mind, we are now planning a number of street demonstrations and even speeches in Evanston, Skokie, Lincolnwood, North Shore, Morton Grove, etc. . . . . Our successful opposition to the Black Invasion of Southwest Chicago will now be turned on the culprits who started it all: The Jews!"

(*d*) "The survivors, if subjected now to demonstrations earlier witnessed by them personally in connection with their earlier torture, will be caused great emotional harm no matter what they do—whether they counter-demonstrate, stay in their homes, or attempt to go about their business as if nothing painful were taking place. There is remedy at law for such deliberate injury. The Illinois Supreme Court (among others) has made it clear that the intentional infliction of severe emotional distress does give a right to redress. Two conditions must be met: (*1*) 'The aggressive invasion of mental equanimity' must be 'unwarranted and unprovoked,' and (*2*) it must be calculated to cause severe emotional disturbance in the person of ordinary sensibilities, or there must be 'special knowledge or notice' of atypical sensibilities. [*Knierim* v. *Izzo*, 174 N.E. 2d, 157, at 165, 1961.] That Nazis have special knowledge of the atypical vulnerability of the Jewish survivors in Skokie is beyond question. Indeed, they planned the demonstration precisely there because that is where the Jews are. Nor is there any doubt that the first condition is also met. What provocation by the Jews warrants the Nazis' carefully planned attack upon them? What could be a clearer instance of the aggressive invasion of mental equanimity of innocent citizens? As a legal matter, as well as a moral one, the conditions of redress are surely present."

(*e*) "But may a court anticipate the need for redress by enjoining the demonstration before it takes place? Yes, it may when what the demonstrators plan to do can be shown to cause irreparable damage if allowed. 'A state has the right to curtail free speech,' an Illinois Appellate Court has written, 'when . . . it determines that such curtailment is necessary to protect the public interest. . . .' [*Jersey County Motor Co.* v. *Teamsters Local 525*, 156 N.E. 2d, 633, at 636, 1959.] The public interest at stake is evident. These survivors of Nazi terror, most of them elderly, sought sanctuary in Skokie. The invasion of that refuge would result in injury to them for which no remedy could then be purchased at any price. Citizens (to use the words of earlier court decisions) cannot expect protection from 'mere vulgarities' or 'meaningless abusive expressions' or 'trivialities and mere bad manners.' And in weighing the impact of the speech a distinction must be drawn between symp-

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toms of emotional distress 'visible to the professional eye' and 'neurotic overreactions to trivial hurts.' Granted. Who doubts which side of that line the consequences of a Nazi demonstration in Skokie would fall?"

(*f*) "It will be said that there is no precedent for such curtailment of speech by court injunction. But no earlier set of facts is anything like these. There is no precedent for the horror of the Nazi campaign against the Jews, and there is no precedent for their publicly announced intention to prey upon their victims by calling vividly to mind the cruelties earlier done to them. 'No person,' the Illinois Supreme Court has said, 'has a right to make war on another.' [*Carpenters' Union* v. *Citizens' Committee*, 164 N.E. 393, at 401, 1928.] The Nazis make war on the Jews. They have done so, brutally, for decades; now, in Skokie, they announce their intention to do so again. There never was anything like this."

The persuasiveness of this argument depends upon its transition from the pain the Nazi demonstration may cause to the action proposed to prevent it. At issue here is not historical fact but the claim that the potenial hurt of recalling it justifies the prohibition of a political demonstration. It does not. Three points:

First. Freedoms simply do not come without cost. For the freedom of speech the cost is often substantial, and sometimes its burden must be unevenly borne. Where speech is genuinely free there must be a collective commitment to accept the consequences of that freedom. Painful and offensive utterances, some cruelly unfair, will be openly aired. Reputations will suffer, sometimes unjustly; old wounds will be opened, sometimes viciously. Our choice is between the protection of freedom with the acceptance of its costs, on the one hand, and the protection of personal sensitivities (and the alleged sensitivities of those in power) at the price of sharply restricting the public forum, on the other hand. That choice has essentially been made by the American body politic. The Nazi blocker would make another.

How great the pain will be for the Jews in Skokie is hard to say. That the public appearance of some fanatic young Nazis would reactivate all the terrors of thirty years before may be an exaggeration. Great anger will be refreshed; that may not be unhealthy. Vigorous counter-demonstrations and the expressed contempt for the Nazis by an articulate press may prove a satisfying balm. Neither pluses nor minuses can be quantified. If there is a nonmeasurable balance on the negative side—which is uncertain—that is one of the unavoidable costs of an open society.

Victims of Stalinism cannot avoid its repeated advocacy. Victims of racism may not silence a racist who teaches their genetic inferiority. Those believing organized religion to be cruel superstition have no more authority to suppress it than have religionists the authority to suppress satanic apostasy. The field of open argument—serious, angry, important argument—runs with blood from psychic wounds.

Second. Of all such costs none is so clearly entailed by the democratic process as that arising from open advocacy of a political party, however crazy or extreme. Hate them as we may, the denial that the Nazis are a party will not stand examination. On the fringe of madness they may be, but that has been said, and will be said, of every revolutionary view. We simply cannot silence a party—any party—and expect to remain free.

Third. Psychic pain, even if so great and deliberate as to be cause for redress, cannot ground the prior restraint of speech. Much of what is feared from the exercise of freedom never transpires. The constitution of an open society—not its document merely but the basic principles of its life—precludes the silencing of some out of concern for the sensibilities of others. This is not callousness but a condition of the democratic process.

Finally, the Nazi blocker must face the fact that it is not harm to some, or danger to all, or incitement to riot, or fighting words, or any such concern that chiefly motivates him. It is the evil of these Nazi views, their blatant racism and anti-Semitism, that he thinks deserves to be silenced. When other arguments have failed he comes in the end to question the principle of free speech itself, asking, in effect, whether that principle really does oblige us to protect all content, however damnable. This is his last resort:

"Some speech content—speech utterly without redeeming social value—is not and ought not be protected by the First Amendment. Hard-core obscenity, as one example, does not come under its umbr lla. Obscenity, of course, is normally associated with sexually explicit matter. But its essential, nonsexual characteristics are two: it is intolerably offensive in some settings, and it is totally worthless. Whatever may go on behind closed doors, not every form of language, or picture, or act is permitted in public places. Lewd depictions of perverted behavior, actual sexual intercourse, or other such matter is forbidden in public. Its prohibition is based on the recognition that thrusting that specific content upon an unwilling audience in a public place is a gross imposition and a cause of offense against which they (and all of us) have a right to be protected. Such matter does not contribute in any way to the political forum. It is barren of ideas, 'not in any proper sense communication of information or opinion safeguarded by the Constitution' as the Supreme Court wrote of some forms of expression not to be protected. [*Chaplinsky* v. *New Hampshire*, 315 U.S. 568, at 572, 1942.]

"Nazi garbage, although not in the same way carnal, is just like that. Citizens of a decent community have the right to be shielded against it in precisely that spirit. Indeed, the intrinsic offensiveness of lascivious acts or pictures is minor compared to that of the public thrusting of irrational racism and anti-Semitism. Its worthlessness is manifest. We contend, therefore, that in a wide but accurate sense of the term, Nazi hate-mongering is obscene. As that category is used in law, we realize, it would not here apply. But it is no stretch of language or concept to call it that, and it is no unreasonable stretch of law to prohibit its presentation on the same fundamental grounds."

All censorship comes to this in the end: some content is so very bad that it must not be heard or seen.

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The root of the issue between blocker and libertarian is here exposed. We may prevent the Nazi demonstration, the blocker believes in his heart, because those views are utterly intolerable. If anything is nearly intolerable, the libertarian believes in his heart, it is that argument from badness—giving the power to silence to those who do not like what they hear. The Nazis provide a splendid illustration. Called manifestly worthless, their views in fact are laden with ideas, many of them despicable, but for that very reason highly meaningful. No segment of the community is entitled to decide for the rest of us that any ideas are so lacking in merit as to be excluded from the public forum.

Even where the matter in question has no political content, and is sexually explicit, and is known to give offense to some in the community, we protect the freedom of others to see and hear by obliging those who are offended to shield themselves by turning away, or walking away. Precisely this issue was faced by the Supreme Court in 1975, when it held invalid a city ordinance that prohibited films "in which the human male or female bare buttocks, human female bare breasts, or human bare pubic areas are shown, if such motion picture, slide, or other exhibits is visible from any public street or place." [*Erznoznik* v. *City of Jacksonville*, 422 U.S. 205, at 207, 1975.] When it is possible for a viewer or hearer to turn away, the Court concluded, his being offended when he does not do so will not serve to cancel the rights of speakers. Justice Powell:

"A State or municipality may protect individual privacy by enacting reasonable time, place, and manner regulations applicable to all speech irrespective of content. . . . But when the government, acting as censor, undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others, the First Amendment strictly limits its power. . . . Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home . . . or the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure." [p. 209.]

An earlier case—in which a young man was vindicated in his right to wear, in a courthouse, a jacket emblazoned with the words "Fuck the Draft"—is cited in support: "The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is . . . dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. Any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of personal predilections." [*Cohen* v. *California*, 403 U.S. 15, at 21, 1971.]

Would the privacy rights of Skokie residents be invaded by a Nazi demonstration in an essentially intolerable manner? Surely not. Persons in their homes are entitled to protection from the intrusive noise of sound trucks blasting so as to reach them no matter what they do. But parks and streets are the common and proper place for political assembly. To some degree we cannot avoid encountering what happens in such places, but we do not have to stay; and we cannot expect to be insulated by law from all that we find intensively objectionable. Justice Powell continues:

"The plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, 'we are inescapably captive audiences for many purposes.' . . . Much that we encounter offends our aesthetic, if not our political and moral, sensibilities. Nevertheless, the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, absent the narrow circumstances described above [in which exposure is impossible to avoid] the burden normally falls upon the viewer to 'avoid further bombardment of [his] sensibilities simply by averting [his] eyes.' [422 U.S. 210.] The screen of a drive-in theatre is not so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it. The 'limited privacy interests of persons on the public streets cannot justify . . . censorship of otherwise protected speech on the basis of its content.' "

"Well," comes the last rejoinder from the blocker, "*is* this otherwise protected speech? By calling attention to its offensiveness and worthlessness we have shown that it, like hard-core obscenity, is not entitled to protection. Hence the legitimacy of restricting it."

But the right of the public to see the Nazis and hear what they say is at least as compelling as the right to look at bare buttocks and breasts. Nudity and sex, some hold, when enjoyed in print and pictures for themselves alone, are utterly without redeeming social value and for that reason not entitled to free-speech protection. That argument, very questionable respecting even hard-core pornography, is patently inapplicable to political matter.

Political debate—"uninhibited, robust, and wide open," in parks and streets as well as lecture halls—will rouse anger and give offense. Public offensiveness, like private distress, is an unavoidable cost of freedom. Citizens who would govern themselves have the right to hear every opinion on their public business. That the Nazis may be vicious or crazy does not cancel our need to pass judgment upon their views. Their speech is protected, as all political speech is protected, partly as a matter of their right, partly as a matter of course.

Exceptions cannot be made for nasty opinions. If the swastika is too offensive for some to tolerate today, the Star of David will be claimed equally intolerable by others tomorrow. These marchers have the same right to sing the *Horst Wessel Lied* as others have to sing the *Internationale* or *We Shall Overcome*. The answer to the argument from badness is not that the symbols complained of are not offensive but that offense of that sort cannot justify prohibiting their display in public places.

The effectiveness of public protest often depends critically upon the symbolic use of location. The Nazis would march in Skokie just because it is heavily Jewish. Think of them what we may, that is part of their political point. Civil rights demonstrators, as part of their

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point, often carried their moral convictions—very offensive to the segregationist majority—to the heart of Jim Crow country, to Selma, Ala., and Philadelphia, Miss. Blacks who demonstrate for fair-housing opportunity bring their protests to the heart of the suburban communities that would exclude them. If we will not protect Nazis carrying "White Power" signs in black neighborhoods, how shall we protect Black Panthers carrying "Black Power" signs in white neighborhoods?

But civil rights marchers carried the banner of decency, while the swastika is the symbol of unspeakable indecency. Yes. That judgment, however, has no bearing on the right to speak publicly. If the history of struggles to defend the freedom of thought and expression teaches anything it teaches this: that persons or parties must not be silenced because of the moral qualities their views are judged to have. Our best hope that public judgment passed upon the Nazis will prove sound rests upon the freedom of all to hear them and all to speak in reply. By presenting the extreme case, these Nazis provide an instructive test of a very good principle. □

FRANCE VOTES TO WAIT AND SEE

THE COMMUNIST MONKEY WRENCH

GODFREY HODGSON

The French, says the old proverb, keep their heart on the Left, but their wallet on the Right. If so, it has to be said that last month almost as many French men and women voted their heart as voted their wallet. For if the elections were a bitter disappointment to the Left, and especially to the non-Communist Left, they certainly do not prove that France is slipping back into lethargic conservatism, the brief flirtation with Change forgotten, as you might have gathered from much of the French and international coverage of the poll.

What, then, does the election prove? First of all, that the system is sharply biased against the Left. A majority of 50.49 percent against 49.29 in the popular vote (in the 423 districts voting in the second round of the election) produced a majority of 291 to 200 in the Chamber. That's fiddling with the scales, by any standard. It took on average 43,000 to elect each of the 137 deputies of President Giscard's new catch-all party, the Democratic Union for France; 45,000 to elect each of Jacques Chirac's 148 Gaullists; 55,000 for each of the eighty-six Communists, and more than 70,000 to elect each of the 103 Socialists whom François Mitterrand led to a disappointing defeat.

This result was not accomplished solely by gerrymandering over the last twenty years by governments of the Right. It happened more because the Right has taken good care not to correct the underlying demographic shifts. Voters in areas that have lost population, like many parts of the underdeveloped southwest and west, and also inner city Paris, tend to be more conservative than those who have flocked to find work in the industrial fringe of Greater Paris and in growing industrial towns like Toulouse, Nantes, Le Mans or Grenoble.

Also, and more important, the bizarre system of the preferential first round of voting, followed by a runoff second round only a week later, distorts the nature of the voters' choice far more than does a U.S.-style primary. Specifically, in this election, it reinforced the voters' instinct to play safe when in doubt. In the first round, the voters can express themselves positively; they choose the candidate they like best. In the second, a great many of them have no alternative but to react negatively, voting to stop the candidate they like least.

It is clear that this reaction, even if from only a relatively small proportion of the voters, was decisive on March 19. That explains why the Left did so much worse in the final poll than during eighteen months of public-opinion polls—all of which showed it to have some kind of chance, despite the two-to-three-point edge which the Right gains from the geographical distribution of seats.

And the polls provide still more specific enlightenment. A Louis Harris-France poll, taken between the two rounds of voting, confirms what many politicians sensed intuitively, and what Valéry Giscard d'Estaing was astute enough to make the foundation of his policy. The French want change. They even—by majorities of from 58 to 63 percent, according to Harris—want some of the very welfare benefits contained in the Left's much-disputed program, and which the Right warned them against: higher minimum wages; higher guaranteed family incomes; lowering of the age of eligibility for social security. But they didn't want the Left to carry out these measures. They chose, or at least a decisive majority chose, Disraeli's formula: conservative men and, they hope, radical policies.

When it came to the point, the decisive margin of voters who drew back from the Left seems to have wanted change without the risk of confusion. To be fair, that risk was real enough. The Left's "common program" proposed higher transfer payments to the old and the poor, higher minimum wages but also a massive nationalization of industry and finance, plus the unspecified but potentially sweeping changes in industrial management embraced by the ill-defined notion of "autogestion," or "worker power." Even most Socialists concede that such a program, at least for a transitional period,

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would have produced higher inflation, falling exports, and an international balance of payments crisis. That would have put the French Government in pawn to the International Monetary Fund, the United States and the West Germans. It was, for many potential Left voters, an unattractive prospect. Indeed, it raised genuine doubts about the realistic prospect for carrying out the "change" the Left offered.

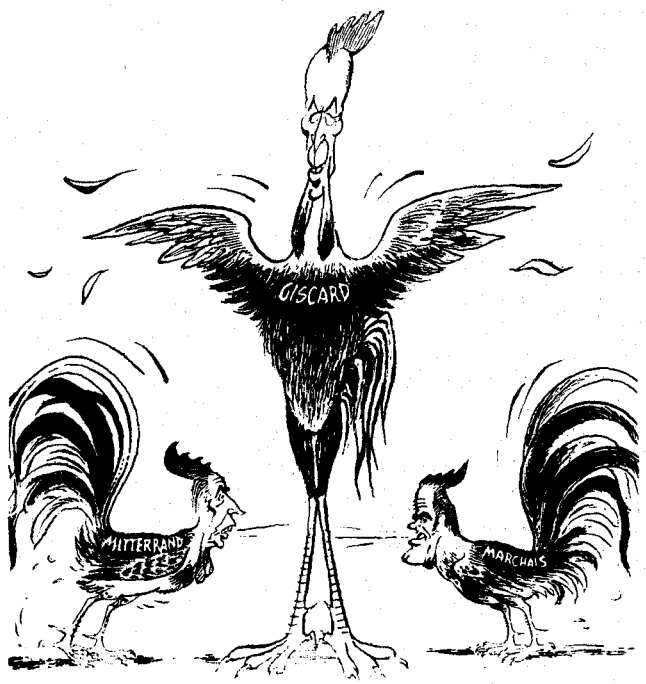
In France, even more than elsewhere, elections are won by shifting a relatively tiny minority from one side to the other. Voting studies going back to 1871 have shown that, if you divide the French electorate into two great camps, Left and Right, party of Movement and party of Order, there have been at most two or three occasions in more than 100 years when as much as 5 percent of the electorate has shifted its allegiance. This year—after twenty years of conservative government, five years of economic crisis (during which the hardships fell disproportionately on the least privileged) and three years of mounting signs that the Left would turn these factors into victory—a crucial minority of the Left's potential recruits drew back at the last moment.

Raymond Aron, veteran social scientist and political commentator of what might be called the Intelligent Right, compressed this into one majestically oversimplified paragraph. "To avoid a political system without a majority like that of the Fourth Republic," he wrote after the election, "the Fifth Republic encouraged two blocs at election time. . . . Ritually, the system asks the French to choose between continuity and *bouleversement*—disruption. Once more, in spite of the crisis, the French have refused disruption."

To equate the Left with disruption is, of course, to load the dice, but there is an even grosser flaw in Aron's analysis: there are not in practice two blocs in French politics; there are four. And that is the problem.

All Gaul, in fact, is now divided into four parties—or almost. And the four are of nearly exactly equal strength. On the first round, which expresses preferences more exactly than the second, a bare two percentage points covered all four runners: Communists 20.56 percent; Giscard's "President's men" 21.45 percent; Socialists (on the Interior Ministry's figures, fiddled to rob them of the prestige of coming in first) 22.59 percent; Gaullists 22.60 percent. And the four cards stubbornly resist shuffling into two pairs. Chirac remains Giscard's bitter rival. As late as the week between the two polls, he was doing his damnedest to sucker Giscard into bear traps, and Giscard and his men had to dodge nimbly to avoid him.

The rivalry between the Socialists and the Communists has always been lethal. It destroyed the Left's chances of winning this 1978 election, and it will get worse, not better. The tragedy of the Left's inability to agree ended on the Monday after the first vote with a bitter little comedy of manners. For six months, from March to September last year, the three parties of the Left (Socialists, Communists, Left Radicals) had been negotiating every last comma of an elaborate "common program of government." They failed, and in September, the talks broke down. The Communists then launched an aggressive, insulting campaign of denunciation against the Socialists and against Mitterrand, their leader.



Behrendt, Het Parool (Amsterdam)

Up and down the country for six months, and most notably in a series of brutal television performances by Georges Marchais, the Communists accused the Socialists of selling out to the Right. Every detail of the negotiations was thrown in their face. The Communists accused the Socialists of having "turned to the Right," of planning to betray the workers by allying themselves with Giscard after the election. And this crude campaign of personal vituperation went on until the very eve of the poll. It was with difficulty that Mitterrand could be brought to shake hands with Marchais for the TV cameras when they met on the Monday after the first round.

The Socialists turned up for that meeting, grim-faced and armed to the teeth with documents, files and draft programs for another tense negotiation. They were met by the Communists, all smiles, and without a paper or a note among them. In half an hour, the agreement it had taken a year *not* to negotiate, sailed through to signature. Too late for the Socialists.

But not for the Communists. Their intention from the start, it is only too plain, had been above all to defend their own position *against the Socialists*—even at the cost, if need be, of sacrificing the chance of taking part in a coalition government of the united Left. It was not that they actively didn't want to get into government, as many commentators have speculated. It was, rather, that a higher priority for them was to prevent the Socialists from substantially outdistancing them as the leading party of the Left.

The French Communist Party is, at the best of times, more defensive than one would gather from reading accounts by its conservative enemies or its own literature, which remains apocalyptic in style (even if what

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is now promised in the Euro-Apocalypse is no longer Revolution, but something called A Real Change).

The party defends the interests, and reflects the somewhat paranoid attitudes, of a rather restricted group of French people. The size of this group remains remarkably constant at around one-fifth of the vote, even though the turnover of its membership is rather high. Most of its militants, and even most of its 5.8 million voters, still come from the old working class—from "*les prolos*": miners, machinists, postmen, railroad workers and their wives, plus some teachers, some farmers and small-town folk from traditionally impoverished regions in the center and south, and their wives. There is also a rolling mass of young people who join the party, or vote for it for a few years, then move on. The party has worked hard on certain special groups: the old, for example, and immigrant workers from North Africa, Spain and Portugal. It remains far more narrowly based than most great parties of the Left in Europe—British Labour, the German Social Democrats or the Italian Communists—which have succeeded in breaking through to middle- and upper-middle-class groups.

In theory, therefore, the party works for the Great Change, and castigates the Socialists for compromising. In practice, it combines revolutionary intransigence with a canny determination to dig in and use the system to defend the interests of "our" people against "big business" and "the masters of France."

And so it was quite in keeping with the party's style that it sacrificed a real chance of placing half a dozen Communist ministers in a Left coalition government in order to seat twelve new Communist deputies in the new Parliament. More important, what Marchais and the rest of the *Bureau Politique* would not risk—and this is the fundamental explanation for the break between the two parties—was that the Socialist Party should make use of the Communist vote to climb into power, and then kick away the ladder by which it had climbed. That would transform the Communists into a tame party of government, condemned to play second fiddle to the Socialists. Worse, there would be no reason for working-class voters not to desert in hordes to the Socialists.

That is why, with the Socialists' hopes of victory in ruins, the Communists couldn't hide their glee that Monday after the first vote. They had what they wanted, narrow and negative though it might seem. The rise of the Socialists had been stopped, and that was worth a grin on any Communist face, on a cold March morning. The Great Change could wait.

The Socialist Party has been terribly shaken. So too, though he is too old a pro to let it show, is François Mitterrand. Four years ago, he came even closer to winning the Presidency. At his next birthday he will be 60—the age, unkind journalists remind him, at which he wanted to allow all French workers to retire. He is already thinking ahead to the next Presidential elections in 1981. His unsinkable determination is not in doubt, but it is far from sure that his party will let him lead it to another defeat. It would be the fourth.

That is one issue on which, within hours of the second poll, the party's latent divisions were already visible. The other, of course, is the future of the ill-fated union with the Communists. (The third partner, the Left Radicals, which won little more than 2 percent of the vote, refuses to join any future coalition.) The left wing of the Socialist Party, led by the ambitious and too self-consciously brilliant Jean-Pierre Chevènement, can count on perhaps a quarter of the membership. It is insisting that the alliance with the Communists must be preserved, at whatever cost, as the only road to power. So, rather surprisingly, is the party's number two, Pierre Mauroy, Mayor of Lille. On the other hand, Michel Rocard, perhaps Mauroy's chief rival for the eventual succession, is saying that the party hurt its own credibility by not standing firmer on the differences between its ideas and those of the Communists.

It is still only seven years since Mitterrand cobbled together the new Socialist Party, and there is obviously a possibility that the frustrations of defeat will cause it to fly apart. That, certainly, is what Giscard is hoping. That he is the real winner of the contest, even the Socialists have to admit. His policy now will be to devise a strategy for change that will tempt enough voters away from the Socialists to widen his lead enough for political comfort, without opening himself to attack from Jacques Chirac and the Right. In theory, his greatly increased Presidential party, with almost as many members as Chirac has in the Chamber, and more than the Socialists, should make it easy for him to bring in the thorny reforms he has himself repeatedly said must be tackled, but from which he has repeatedly shied. The most urgent of these are new legislation in the field of industrial democracy, to take the ball away from the Socialists' plans for "autogestion"; and a serious attack on tax evasion and fiscal injustice. In theory, I say, he should now be able to do these things that he has talked about, and not done, since 1974. In practice, it is not certain that he has the will to try, and even less certain that, assuming the will, he can succeed.

If he fails, the Socialist Party will still be there, ideologically confused, divided, discouraged, and disunited, but still the natural instrument to carry out the massive latent mandate for change which, in their different ways, all parties acknowledge. But first the Socialists must rethink their fundamental strategy. Can they win power only in alliance with the Communists? If so, then the sooner they can rebuild that alliance the better. Or will they do better once the Communist mortgage on their future has been paid off? If that is the case—and after what has happened many Socialists believe that the alliance with the Communists was a dangerous temptation—then they will have to take the other route, and build up a massive Social Democratic Party of the moderate Left, abandoning to the Communists the 15 to 20 percent of the electorate that is prepared to live and die with "the party of the working class." The second alternative will not be easy for the Socialists, but in the wake of these elections there is a growing conviction in their ranks that it will turn out to be the only way ahead. The solid result of this essentially inconclusive election is to force the Socialists to make the decision, one way or the other. □

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THE TRICK IN A TREATY

Tax Dodging at the State Level

JONATHAN ROWE

Tax dodging is an old and still popular game. More than fifty years ago a British brewery called Bass, Ratcliff and Gretton, Ltd. sold almost a quarter of a million dollars worth of ale in New York but declared no taxable profits there. All its profits, the company said, had arisen in Great Britain. This disturbed New York tax authorities, who thought that the company should pay some tax to the state. Otherwise, the British company, along with other foreign-based concerns, could have an unfair advantage in the New York market, having avoided taxes through transatlantic bookkeeping maneuvers.

To counteract such devices, New York treated the brewery and its New York distributor as a single entity, a "unitary business," and apportioned to the state a fair percentage of the company's income. Bass, outraged at being asked to pay approximately $800, took the case to the Supreme Court, which in 1924 upheld the state's action, saying:

> (T)he Company carried on the unitary business of manufacturing and selling ale, in which its profits were earned by a series of transactions beginning with the manufacture in England and ending in sales in New York and other places—the process of manufacturing resulting in no profits until it ends in sales—the State was justified in attributing to New York a just proportion of the profits earned by the Company from such unitary business.

For years multinational corporations have been trying to prevent the states from piercing their tax-avoidance devices, as New York had done, and for years both Congress and the courts have turned them down. Now, however, the struggle is coming to a head in a most unlikely document: a proposed treaty between the United States and the United Kingdom, currently before the U.S. Senate. Under the guise of merely harmonizing the tax systems of the two nations, the treaty goes much further, providing a potpourri of benefits for oil companies, foreign-flag freighters and multinationals generally. One provision, Article 9(4), is an unprecedented curb on the taxing authority of the individual states. It would bar them from taking into account the overseas operations of British-based multinationals, as New York did fifty years ago, to make sure the companies weren't playing musical chairs with their income.

"The lobbying on the U.K. Treaty has been heavier than on anything I've ever seen up here—*Anything*," said a Congressional staff member. Pointing to a 6-inch stack of pink telephone messages, he added, "These are just the ones I've kept." Almost all the calls were from multinational corporations.

Jonathan Rowe is deputy executive director of the Multistate Tax Commission, Boulder, Colo. With Robert Brandon and Tom Stanton, he is the author of Tax Politics (*Pantheon*).

Resort to the treaty process to achieve the state tax restriction was a stroke of strategic genius. The states would not be present at the negotiating table; they would not even know that the issue was being considered. Further, when the restriction got to the Senate, it would have the advantage of a rider on an important appropriations bill; the Senate could reject it only at risk of jeopardizing the whole treaty. There would be no room for compromise. Moreover, the Senate Finance Committee and the House Ways and Means Committee would be bypassed.

Once adopted as part of a treaty, moreover, the restriction would be more firmly entrenched than it would be in legislation. And a concession granted to one country would invite demands for equal treatment from multinationals based in other countries. Eventually, our own U.S.-based multinationals would join the line, asking how the Congress could deny to them what the Treasury had given their foreign competitors.

The U.K. Treaty was negotiated under then Treasury Secretary William Simon. Simon, a former partner in the Salomon Bros. investment firm (which has a branch in London), was determined to gain from the British a tax break for U.S. investors in that country. The Secretary played such hard ball with the British that Secretary of State Kissinger was forced to intervene at the White House to rein him in. Nevertheless, Mr. Simon got what he wanted. Then, Simon having scored this coup, the U.S. negotiators felt generous. The British said that their multinationals (including government-owned British Petroleum) were being annoyed by nosy state tax auditors. "Say no more," said Treasury, delighted by this opportunity both to appease the British at the expense of the states (but not itself) and to seize for U.S. multinationals a plum to be enjoyed in the predictable future. The U.S. negotiators may even have "suggested" this concession to the British.

Treasury didn't have the decency even to inform the states after the deal had been made—California officials stumbled upon the provision in a routine Treasury press release. It angered them. "The Treasury Department seems to feel that playing poker with another person's chips without his knowledge is perfectly O.K.," said California State Controller Ken Cory. The Treasury people counter that such secrecy is necessary to prevent disruptive leaks. "That's bunk," a former Treasury attorney replies. "When corporations have bucks at stake in treaties, they go calling at Treasury every month to check up on things."

Substantial revenues are at stake. Once the chain of precedent has run its course—which Treasury concedes it intends to make happen—California alone will lose more than $120 million, Alaska another $50 million, with a high percentage of these sums going to multi-

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national oil companies. Furthermore, it is impossible to calculate the loss of deterrence. When multinationals know that the states' hands are tied, they will be more inclined to fudge on their tax returns.

More important than the revenues is the principle. The states say that their relations with the federal government should be worked out in Congress, where they are represented and where give and take is possible; not in the treaty process from which they are excluded. The U.K. Treaty would hang a dangerous precedent over their heads. Multinationals have a long list of disputes with the states, and the U.K. Treaty, if passed, will open the door to resolving many of these through the treaty process.

What most outraged the states is that the treaty would force them to use an audit method that has been proven an utter lemon. As the Bass, Ratcliff & Gretton brewery case illustrated, the problem that both state and federal tax administrators face is how to distinguish a multinational's so-called foreign income from what is taxable within the states. The books of the companies often don't help much; "What companies call their earnings can be almost anything they want them to be," the head of a leading Wall Street investment firm told *Forbes*.

There are two basic ways to distinguish U.S. from foreign income. One, favored by Treasury, is the "arm's-length" or "separate-accounting" method; the other is the "unitary" or "whole-business" method. At least twenty-three states now use the latter method to supplement the arm's-length method; and a number of states, led by California, Alaska and Oregon, use it as a general policy.

The difference between the two approaches is evident. The arm's-length method accepts at face value the corporate structure presented by the company. If an oil company has a drilling subsidiary in Saudi Arabia, a transportation subsidiary based in Panama, and refining and marketing subsidiaries in the United States, the arm's-length method looks only at the U.S. subsidiaries. When Treasury suspects that the company has been sneaking its U.S. income into its foreign operations, IRS auditors try to work their way, invoice by invoice, through all the transactions between the United States and foreign subsidiaries, to make sure that they were made at genuine—i.e., "arm's-length"—prices. Considering that multinationals can have hundreds of subsidiaries, among which they carry out thousands of recorded and unrecorded transactions, the task can be overwhelming.

"The arm's-length method is totally ineffective," says Alaska State Revenue Com. Sterling Gallagher. And he should know. By adhering to it, several major oil companies were reporting no income in his state. One foreign-based multinational had done business in Alaska for thirty years without paying a penny in income tax either to the state or to the IRS.

The complexity of the arm's-length method spawns tedious and expensive litigation, the prospect of which cows tax officials into generous settlements with the corporations. "The reason corporations like the arm's-length method so much is that they can usually settle their tax bills for 50¢ on the dollar," a State Department expert said.

The unitary method, by contrast, is simplicity itself. It looks at the substance of the multinational business, not the form. If the parts of the business are interconnected—as are the drilling and marketing parts of a multinational oil company—they are treated as a unit, without regard to the paper corporations into which the company's lawyers have divided them. The total income of this unitary business is apportioned among the states and nations according to the percentage of the company's business that is done in each. Thus, if 2 percent of the company's payroll, sales and property are located in California, that state gets to tax 2 percent of the company's income.

The unitary method keeps corporate tax lawyers awake nights. It washes out the complicated legal arrangements by which they make U.S. income appear to have arisen abroad. These attorneys are especially worried that other countries will twig to the superiority of the unitary method. Brian Aungiers, an accountant with the London branch of Peat Marwick and Mitchell, has acknowledged that the unitary approach has "substantial theoretical justification and may represent the wave of the future." And John Nolan, lobbyist for British multinationals, has warned his colleagues that, "There is a real danger that foreign governments . . . will see the potential in this approach and begin to use it."

Rather than discrediting the unitary method, as multinationals had hoped and expected, the debate over the U.K. Treaty has produced impressive evidence against Treasury's own practices, much of it coming from the department itself. A Treasury study that was unearthed showed that the arm's-length method failed to work 40 percent of the time, and that in such cases the IRS often resorted to a form of the unitary method. Another Treasury study conceded that the arm's-length method would "strain the administrative capability of many states." It turned out, moreover, that Treasury itself had proposed adopting the unitary method as part of President Kennedy's tax-reform program.

The case against the states became weaker yet when Treasury found itself caught between the U.K. Treaty on one side, and President Carter's tax-reform proposals on the other. The President wants to end the deferral from taxation of income that multinationals call "foreign." To justify this proposal, Treasury had to concede that the arm's-length method, through which it has tried to prevent abuses of deferral, is "difficult" to administer, and that its use costs the Treasury "substantial" revenues. These admissions flatly contradict Treasury's defense of the U.K. Treaty.

Frustrated in their attempts to attack the unitary method, both Treasury and the multinationals have shifted ground. Instead of defending Article 9(4), they now warn that to reject it would jeopardize the entire treaty. "We'd give up Article 9(4) if it wouldn't put the whole treaty in danger," Burns Stanley, the Ford Com-

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pany's genial tax lobbyist, told a recent meeting of the National Conference of State Legislatures.

But why are we so eager for this treaty? Treasury gloats over how much the British give "us," but the "us" seems to be mainly the multinationals. One provision is a tax break for U.S. investors in Britain, two-thirds of whom are corporate. Treasury charms the states with talk of the income tax revenues they will gain from extra dividends coming across the Atlantic. But it fails to add that at least nineteen states, including New York, Connecticut and Pennsylvania, exempt such dividends from taxation. The states might well wonder whether they'd be better off if, in place of a few dividend crumbs from foreign investment, Treasury adopted policies that encourage investment in the United States.

A second important treaty provision is a tax credit for U.S. oil companies producing in the North Sea. Its effect is to double the U.S. tax reduction that these companies otherwise receive. This provision contradicts the stated policies of both Congress and the administration to clamp down on such credits, and it encourages U.S. corporations to invest in foreign production at a time when we are supposed to be fostering production here at home.

The Senate brouhaha mounting over Article 9(4) probably surpasses anything in tax treaty history. Last summer Senate approval seemed in the bag, but now "the treaty is in real jeoepardy," said the worried Nolan. Major credit goes to Sen. Frank Church (D., Idaho), who spotted the 9(4) giveaway while it was still a sleeper, and who has pressed his opposition in the face of tidal waves of corporate pressure. Although the Senate Foreign Relations Committee rejected Church's motion to "reserve" (i.e., delete) Article 9(4), the vote was unexpectedly close, with Senators Clark (D., Iowa), Humphrey (D., Minn.), Sarbanes (D., Md.) and Sparkman (D., Ala.) voting against a multinational tax break on the state level. Almost thirty Senators are already on record against the provision and thirty-four votes would kill it on the Senate floor.

The multinationals want this one badly, however, and will slug it out in the state capitols as well as in the Senate. Their Committee on State Taxation, a lobbying organization, put so much pressure on the Governors that a resolution opposing Article 9(4) did not get out of committee at the National Governors' Association midwinter meeting. ("We were deluged," several Governors' aides said afterward.) Bethlehem Steel came on so heavily in several states that its tax lobbyist was invited to make a special presentation at the National Conference of State Legislatures meeting the following week. (The steel companies' efforts prompted some to wonder why, if the steel industry is really so beset by foreign competition, it was now pressing so hard for tax breaks for foreign producers.)

The corporate position is damaged by a letter from Nolan to another well-known corporate tax lobbyist, Charls Walker. (Both were Treasury officials in the Nixon administration.) The multinationals have accused the states of making a mountain out of a molehill, but the letter, made public by Jack Anderson, revealed to the world that Article 9(4) was indeed just the opening wedge for a larger scheme. "The problem [state taxation of multinationals] probably will be solved, if at all," Nolan wrote to Walker, "only by starting with modest limitations on the California [unitary] practice through tax treaties. It may *then* become possible to achieve a broader legislative solution."

The multinationals' case on Article 9(4) was damaged further by the discovery that on other issues they, like Treasury, have been singing contrary tunes. For example, the major oil companies have been fighting a proposal that they be broken up into smaller, more competitive units on the ground that the eggs of their international operations are completely scrambled together. "The petroleum business is unitary in nature," the controller of the Exxon Corporation stated in a letter to the late Sen. Philip Hart. That is not what most multinationals say when states attempt to treat them as unitary.

It turned out, moreover, that a substantial number of corporations actually favor the unitary method, and have been reporting that way voluntarily for years. "All major extensions of the unitary method in California have come at the insistence of taxpayers," said attorney Ben Miller of the California Franchise Tax Board which, to avoid unequal treatment, was finally forced to adopt this method as general policy.

Furthermore, Senate staffers are beginning to catch on to Treasury's use of the treaty process to bypass Congress. "Treasury finds the legislative process too cumbersome so it goes and writes its desires into treaties," one staffer complained. "And, once it's in a treaty, we are committed as a matter of policy to give it to others."

Meanwhile, labor unions and other organizations are joining the states in opposition to 9(4). In late February, the AFL-CIO adopted a formal resolution condemning Article 9(4), and the Consumer Federation of America called it a "rip-off of the American consumer" in a letter to Foreign Relations Committee members. The Oil, Chemical, and Atomic Workers wants to kill the entire treaty because of the incentives for foreign oil production.

It is ironic that the original purpose of the Senate's role in the treaty process was to protect the states in foreign relations matters, such as boundary disputes and navigation rights to rivers, which directly affected them. The Article 9(4) threat to state taxing powers is a direct descendant of these concerns. However, even if the Senate reneges on this responsibility to the states and approves 9(4), the treaty still must clear the White House, where President Carter is no stranger to these matters. While Governor of Georgia, he created the state's first corporate audit division. Each of Georgia's corporate auditors now brings the state an average of nearly one-third of $1 million in new revenues each year, or close to $15 for each $1 the state spends on the program. President Carter may balk at allowing his Treasury Department to undermine such work, especially when, in doing so, it would be sacrificing his own tax-reform goals to policies concocted during the Ford administration. □

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COORS BEER, THE UNION BUSTER

PETER MICHELSON

Set in a creek-bed arroyo surrounded by high mesa buttes, Golden, Colo., has an archetypal Western setting. A large sign above the main street—"Where the West Remains"—invokes the fabled past, but two blocks away stands the monolithic reality of the Adolph Coors Company, the fifth largest American brewer housed in the world's largest single brewery. If the setting smacks of the old West, so does the standoff between the company and its union brewery workers, who have been on strike for a full year, since April 5, 1977. The union has also instituted a nationwide boycott of Coors beer, with the backing of the AFL-CIO. If you ask workers on the picket line what the chief issue of the strike is they'll tell you, "union busting!" And if Bill Coors, chairman of the Coors board, is to be taken at his word, they're right. "If organized labor is in command," Coors said in a recent speech, "we no longer have a free society." His brother Joe, president of the company, backs him up: "I honestly see very little appropriate role for unions in this day and age." Moreover, the Coors brothers and other company spokesmen have steadily maintained since the strike that "the company is committed to an open shop." So there on the streets of the classic company town is the classic shoot-out between labor and management.

The union points beyond Coors's anti-labor rhetoric to a long company record of eliminating and weakening unions not only in the brewery but throughout Coors's industrial complex, a record, they say, of which Bill Coors openly boasts. "I've got the big stick," the union quotes him, "and I intend to use it." And Joe Coors is a serious supporter of the National Right to Work Committee, highly successful in its agitations for union-busting legislation. The workers are convinced that Coors forced the strike by offering a contract and a hard-line negotiating attitude so "regressive" that the union would have no alternative. Gerry Kaveny, chief negotiator for the company, denies this, saying that company proposals were motivated by the need to make its plant operations more efficient and flexible.

Whether or not Coors forced the strike, its subsequent strategy seems designed to exploit it. The new contract proposal initially had no open-shop provision, but after the strike began the company demanded one. Having hired replacements for the striking workers, it now claims an obligation to retain and protect these "loyal" workers by way of an open shop. That move, whereby the Coors brothers have linked political convictions to their company policy toward employees, has created profound antagonism among the striking workers.

Peter Michelson, a member of the Department of English of the University of Colorado, Boulder, has just published his second book of poetry, Pacific Plainsong, *from Brillig Works.*

The dispute is not primarily about money. "When you walk through that gate," said one twenty-year Coors worker, "you give up your human rights. Coors tells you you've got one right, the right not to work at Coors."

The strike issues turn on questions of seniority, management prerogatives, and the company's use of a mandatory polygraph test, but behind these are deeper matters not easily expressed in contract terms. Summed up, the workers harbor a long-standing resentment of what they regard as the contempt, paranoia and authoritarianism to be found in Coors's attitude toward its employees.

Bill Coors is sensitive about the brewery's political image. "I am not," he says, "nor is my brother, a reactionary." They are conservatives, he says, who simply believe in free enterprise and fiscal responsibility for the federal government. "We would like to have for all the people the same services and things that liberals want for them; the difference is that liberals think we can afford them, and conservatives know we cannot." He goes on to say that the only way we *might* afford them is through higher production. "I'm willing to pay higher taxes," he says disarmingly, "so long as there is higher production as a basis." Perhaps, but as you hear this you can look out on a huge concrete and steel building bolted together in prefabricated sections so as to qualify as a "temporary" building and thus for a lower property tax base. Then, too, there is the incredible list of right-wing organizations to which brother Joe gives money and allegiance. It includes the John Birch Society, Committee for Survival of a Free Congress, National Strategy Information Center, National Right to Work Committee, STOP ERA, and the Heritage Foundation, to name only those with overt Coors involvement and having specifically political raisons d'être.

Operating from this background, the Coors strategy quickly outmaneuvered the union. Within two weeks of the strike—after they had received a series of company letters that threatened strikers, perhaps illegally, with permanent loss of jobs and, the union contends, misrepresented company contract proposals—more than half of the initial 1,472 striking workers crossed the picket line and returned to work. While the union maintained its nonviolent picket line and filed charges of unfair practices with the National Labor Relations Board, Coors replaced strikers with eager workers from the Denver area's chronically high unemployment pool.

The NLRB dismissed the unfair practices charges late in March and Local 366 is now consulting the AFL-CIO on the advisability of appealing the case to the Federal District Court in Denver. Coors is operating at more or less full capacity and, when the union failed to shut down the plant, management dropped its open-shop bomb, all but obliterating the union's major issues of oppressive working conditions and eroding seniority rights. Meanwhile, the Transportation Drivers and Mechanics,

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a sub-unit of Local 366, has accepted an open-shop contract and voted to leave the union to set up its own "association."

The strike has in effect become a lockout, and the principal negotiating items now are the company's insistence on an open shop and the union's insistence that striking workers be reinstated; seniority and human rights run a distant third. But issues have in any case become academic because there are no foreseeable negotiations. Nor is the company—which has what it wants, a full work force and no union—in any hurry. "If the status quo continues for ten years," Bill Coors says, "it's all right with us."

The union hopes to turn Coors around with its nationwide boycott, which has, in addition to AFL-CIO sanction, the support of the United Farm Workers and the Teamsters. Coors, acknowledging a 10 percent drop in sales and a 5.3 percent drop in production, admits that the boycott is hurting. Ray Marcouillier, brewery worker and volunteer chairman of the Colorado Boycott Committee, contends that, if the negative growth rate is considered, the boycott signifies a good deal more than the company is letting on.

But, while the boycott is effective, it may not be enough so to change Coors's strategy. For one thing the entire beer industry is currently reeling from a donnybrook competition between Anheuser-Busch and Miller Brewing. Financial analysts say that this fight—which involves the introduction of new products and marketing styles—will cause fundamental changes in the industry to which Coors, Schlitz and Pabst, the other three of the big five, will not be able to respond. The analysts project long-range downward sales spirals for these and other brewers. So Coors, despite massive if depressed profits at the moment, appears to be fighting for its life. "Not long ago there were 400 breweries in this country," Bill Coors says, "now there are about forty, and in a few years there will be less than ten; we intend to be one of those." Market experts may see more imaginative competition as Coors's major problem, but the Coors brothers themselves, infatuated with free enterprise, prefer to think that organized labor is the big threat. Determined to bring it to its knees, they are prepared if necessary, they say, to concede as much as a 30 percent loss in sales to the boycott, which they hope to offset by expanding into new marketing areas, rather than surrender to union demands, which they think will cut plant efficiency.

Nonetheless, Coors is in no immediate danger of demise. If it's not number one it is still a strong, very large company. As Bob Russo, Coors's director of public relations, put it, "Coors alone in the industry is resisting organized labor's incursions on management prerogatives." In its studied indifference to the market effects of the boycott Coors may possibly be whistling in the dark, but its sense of mission is thus far unshaken. And in the Coors mind Local 366 is little more than Big Labor's hired gun. So, despite considerable support from the AFL-CIO, UFW and Teamsters, the union is battling against the odds. Its unanimous vote on March 9 to reject an open-shop contract confirms its determination to fight on. In the words of a fifteen-year Chicano employee on the picket line: "After you put some years in you want to be able to take some pride in your occupation, but they take that away from you."

When Bill Coors says, "We really don't know here why they struck," he is at once truthful and self-servingly disingenuous. Having himself defined matters in terms of traditional class conflict, it is disingenuous to ignore the negotiating implications of his own self-interest in the supremacy of capital. On the other hand, his perspective is so deeply rooted in the rights and virtues of capital that he cannot really understand social dynamics in any other way. Thus he finds it unreasonable that workers should *expect* to have control over the conditions under which they work. He believes, accordingly, that because "organized labor can't control itself it's going to lead this country into socialism." In fact, the striking workers of Local 366 have the most conventional of American politics. "We had some Communists come in and wanted to run the boycott," said one retired worker on the picket line, "but we run them off." For these workers the issue is much more down to earth; it is the quality of the lives they lead.

Over the years of contract negotiations with Coors, they contend, the list of workers' rights has diminished while management prerogatives have expanded. Each addition has brought further evidence of Coors's power over their lives. In the Discipline and Discharge section of the current contract, for example, the following are among a long list of "just causes for immediate discharge:" conduct on company premises which violates the common decency or morality of the community; disrespect toward superiors; disparaging remarks about the employer or the employer's products, or any words or deeds which would discourage any person from drinking Coors beer; refusal to permit a company-authorized inspection by plant guards of objects brought into or taken out of the employer's property. Further, if the union challenges dismissals on such grounds, "only the question as to what acts are prohibited and whether the employee committed any of the prohibited acts shall be subject to review through the grievance or arbitration procedures of this Agreement." Such injunctions not only violate basic democratic rights but their ambiguously broad wording contradicts reasonable rules of evidence. And they are used, say the strikers, to harass, intimidate and keep workers in line.

Moreover, says the union, not only are new company proposals attacks on union viability—by their dismissal of seniority rights and their further obstructions to grievance and arbitration—but they make workers yet more susceptible to the company's arbitrary control. The company, for instance, now wants the right to shorten a shift or work week or place a worker on straight or rotating shift "at its sole discretion" and without regard to seniority. This derogation of seniority is especially galling to long-time Coors employees. "Who built him? The old guys, the ones he now calls 'monkeys,'

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they're the ones who built him," a twenty-nine-year employee said of Joe Coors. Another veteran chimed in, "When they said they needed a 10 percent increase in sales to survive we said O.K., and we worked the overtime to up the production. . . . Sure they paid, but I've worked sixty- and seventy-hour weeks in this place, at times I've gone thirty days without a day off. . . . A good loyal employee is worth something, but Joe Coors doesn't think so. . . ." Once they get talking, the old-timers' bitterness toward the Coors brothers flows more freely than the Bud and Schlitz they drink conspicuously on the picket line, sporting big yellow, "I don't drink Coors" buttons.

In 1974 they voted to work straight shifts, and they want that right in their new contract. Otherwise, they say, the stability and structure of their lives both in and out of the plant is totally at the discretion and convenience of the company. To work a rotating shift means to work, by two-week turns, day, swing and graveyard shifts. And there have been times when a worker's schedule has changed daily. "Your body just can't take that kind of thing," Ray Marcoullier said. "They want to turn us off and on like we were things instead of people," another striker said, "all they care about is production."

Bill Coors is fond of saying that unions are necessary only for unenlightened employers. But, predictably, he reserves the right to determine what managerial policies are enlightened. The issue of the strike obviously is not dignity simply because a union slogan says so, nor even because of union charges that Coors has discriminated in hiring against Chicanos, blacks, women and homosexuals. In fact, the union record on discrimination is no better than that of the company. The difference is that labor, whatever have been its own abuses and corruptions, expresses human desires, while management expresses functional desires. And if dignity means anything it means the power to be as freely human as possible, even in a place of work where one performs mechanical functions.

When the Coors brothers argue that organized labor cannot control itself they are saying, in explicit identification with the coal operators, incidentally, that labor restricts the economic mobility of management. Management, both Coors and the mine owners, has a ready answer to that problem—break up union power, which is what an open shop means. Thus at the heart of both the Coors and UMW strikes is an unresolvable cultural antagonism between those who measure social welfare in the abstract terms of gross national product and those who must willy-nilly measure it according to the daily quality of their lives. The brewery workers, like their UMW counterparts, are desperately trying to sustain at least the degree of dignity provided by collective bargaining for rights as well as wages.

Coors counters the dignity issue by posing another disingenuous question: why, if conditions are so bad here, are we flooded with thousands of job applicants? The obvious answer is the current economic recession and high unemployment. Moreover, the Denver area not only has high unemployment but also generally low wages, and the whole mountain West is weak union country. The brewery pays good wages for the region, so there are plenty of people willing to cross a peaceful picket line. Unlike Eastern coal fields, where union traditions are in the blood, there is little cultural support for strikes in the West. Union workers who have crossed the line evince little more enthusiasm for Coors's policies than do the strikers. Most went back for financial reasons, many after having vainly sought work elsewhere (and many of these suspect that regional employers blacklisted Coors strikers). Ironically, some of the more radical workers went back because they thought the union's pacific picket line forfeited the whole purpose and effectiveness of the strike. Some allow that conditions and policies in the plant have improved since the strike, though they remain skeptical about the permanence of the changes.

Before the strike, Coors had hired only ninety-two Chicanos, fifty-nine blacks and forty-five women among the 1,472 workers in the Production and Maintenance Departments covered by the brewery workers' contract. In May 1977, a month after the strike and boycott started, Coors settled a long-standing suit with the federal Equal Employment Opportunity Commission, which charged the company with being "intentionally engaged in unlawful employment practices since 1965." Coors did not admit past bias, but agreed that its future employment practices would be nondiscriminatory. For nine years Chicano groups have been boycotting Coors for its hiring procedures, but since the strike and EEOC settlement the company has been hiring more women and minorities. It even has launched a PR campaign to change its image. "At Coors," say the new ads, featuring photos of brightly smiling women, blacks and Chicanos, "People Make the Difference."

In its heroically benighted bid to hold the free enterprise act together, Coors has not only been called to account by the EEOC. It has also run afoul of a Chicano coalition, gay rights groups and the Colorado Civil Rights Commission for racist and sexist practices; the NLRB for a variety of unfair labor practices (one ruling against the company is as recent as last February 27); the Colorado environmental commission for pollution violations, and the Federal Trade Commission for price fixing and coercion of wholesale distributors and retail accounts as well as other "illegal anti-competitive business practices." This nightmarish matrix of evasions and manipulations of the law—including violations of the very system they claim to support and defend—is apparently what Coors envisions as a free society. Ready to break organized labor's back for being "out of control," they are not so fastidious about keeping their own house in order.

"For forty-two years we've reluctantly granted a union shop here," Bill Coors says, "but philosophically we've always been opposed to it." Then he muses on his long history of battles with the unions, battles he's won against Teamsters, Carpenters, Electricians, and many others. "Pretty soon," he says almost plaintively, "you find yourself fighting the whole world." It may be that that's where his philosophy ultimately leads. □

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BOOKS & THE ARTS

Abortion: The Hidden Agenda

FROM PRIVATE VICE TO PUBLIC VIRTUE: The Birth Control Movement and American Society Since 1830. *By James Reed. Basic Books. 456 pp. $17.95.*

ABORTION IN AMERICA. *By James C. Mohr. Oxford University Press. 331 pp. $12.50.*

JANE O'REILLY

I am absolutely certain that women must be free to control their own reproductive capacities before they can achieve the not particularly advanced position of equality with men—from which point we shall all march into a brighter future. But, after reading these two complex and enlightening books, *Abortion in America*, by James C. Mohr, and *From Private Vice to Public Virtue*, by James Reed, I am no longer so positive that the people who disagree with me are necessarily manipulators of the basic means of production, the powerful oppressing the powerless, religious fanatics, or pig-headed and sentimental obstructionists.

They may be all of those things, in effect if not intent, but they may also be—along with me—simply dependent for their views on the state of the technology and the economy, the slight progressions of history, and the balance of politics and society. Even our moral absolutes may be only manifestations of the collective wisdom of our particular time and place.

For example, the urge to reproduce may not be a basic biological instinct. James Reed prefaces his book by saying: "Anthropologists studying human reproduction in premodern cultures have found that the desire for children is not an innate human drive but an acquired motive which must be reinforced by social rewards and punishments sufficient to overcome the wish to avoid the pain of childbirth and the burdens of parenthood. . . . Conflict between the social need to preserve the species and the individual desire to escape the burden of childbearing is a universal part of the human experience. Societies that survive develop prenatal values that support the process of procreation.

Jane O'Reilly is a nationally syndicated newspaper columnist.

"Social needs or goals are often at odds, however, with the aspirations of individuals." Mr. Reed's book, which is subtitled *The Birth Control Movement and American Society Since 1830*, is a history of a conflict between changing personal and public goals.

He has organized his extraordinary mass of research around three people who "represented change in the birth control movement." They are: Margaret Sanger, who wished to give women control over their own bodies, Robert Dickinson, who devoted himself to breaking down the resistance of his fellow doctors because he believed that a happy sexual adjustment would result in a stable family life, and Clarence Gamble, doctor and soap heir, who tried to find a universally effective contraceptive because he feared the results of the differential fertility between classes.

The scientific/academic intricacies of Gregory Pincus's development of the pill are also examined, a bit too thoroughly for a reader who is anxious to press on with Mr. Reed's theory of social change. His story, quietly told and thoroughly assembled, is of attitudes—toward progress, woman's role, and sexuality—which changed and thus made birth control acceptable.

Both Reed and James Mohr trace the demographic shifts of the nineteenth and early twentieth centuries which affected and were affected by attitudes. In 1800 the average American woman had 7.04 children; by 1900 she had 3.56. The steepest drop occurred between 1840 and 1850, when, as Mohr writes: "Abortion information, abortion services, and abortion itself came out into the open." Abortion, then as now, was not the primary means of birth control but a last resort of people already committed to family limitation. Withdrawal, abstinence, sponges, pessaries, condoms and rhythm were then, as now, the most widely used methods of birth control, and were then, as now, dependent for effectiveness on the degree of the user's motivation.

According to Mohr, "everyone" knew of methods of inducing abortions in the early 19th century. An extract of juniper berries was the most widely used method, but "regular" doctors, with some European-based training, knew relatively safe mechanical methods. Producers of patent remedies and practitioners who offered help with "ladies complaints" enjoyed an enormously lucrative business in the 1840s. Before the middle of the 18th century, the health risks from abortion were not much more than the high risk of childbirth itself.

Abortion in America contains extensive descriptions of the kinds of folk and patent remedies used to induce abortions, but it does not tell us how they were prepared (perhaps in fear that some anxious reader will try them) or, more importantly, how they worked on the body and what a real woman involved might have felt like.

Both Mohr and Reed seem somewhat remote about the victims of the policies they are discussing. Perhaps, indeed, women did not then see themselves as "victims." Perhaps they were able to reconcile themselves, in ways I cannot now imagine, to the contradiction between a generally accepted ideology that all healthy women were willing multiple mothers, and the fact that every time an individual woman rolled over in bed she faced the possibility of illness, pain or death.

Information on abortion and birth control was available, until it became economically and socially desirable to suppress it, but that information, along with that concerning most bodily functions, was obscured by euphemism and shame. Neither of these books fully satisfies my desire to know what women themselves thought of their own experience, but they do remind me that notions of equality and self-determination were bravely arrived at before anaesthesia and antiseptic, before 1910 when Lane Bryant began marketing maternity clothes—thus ending "confinement"—and before 1920, when Kotex was invented.

Even in the 1830s, Americans tried to deal with a changing society by reading great quantities of self-help books and evoking an image of an ideal, earlier time. They argued that birth control was unhealthy and possibly immoral, but they practiced it as far as they were able. They did not believe that abortion was a life or death issue if the mother had not felt "quickening" (and, indeed, there was no way to tell with certainty

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if a woman was pregnant) and they strongly opposed the earliest efforts to regulate abortion. As Mohr writes, "the criminal status of abortion originated as a doctors' and lawyers' issue, not as a popular issue in any sense." Even the churches were indifferent.

Those early anti-abortion efforts, during the 1840s and 1850s, were part of a general effort of "regular" physicians to control the risks of all operations, quacks, nostrums, and the commercialization of abortion. At the time, trained physicians had only marginally better success than the quacks or the home remedies.

The true crusade against abortion (which came by the 1870s to be known as "The Crime of the Age") took place between 1857 and 1880, and resulted in legislation which remained much the same until the Supreme Court decision of 1973. The regular doctors, newly organized as the American Medical Association, under the leadership of a Boston doctor named Horatio Robinson Storer, "who still had a reputation to make," set out to save America from itself.

After the Civil War, doctors had the scientific knowledge to make abortion safe. It could easily have become a regular part of the medical business but, for a variety of personal and professional reasons, it did not. Instead, the AMA used abortion as a rallying point to deploy legislative sanctions against its competitors, to create a sense of professional esprit de corps, and to recover what they saw as the doctors' rightful role as society's moral arbiters.

Personally, many physicians (none of whom were women) believed that abortion was morally wrong—a debate which is at least 5,000 years old. They had also been affected by the new sort of women who were having abortions: no longer the seduced and pitiful young girl, but white, Protestant, married women—native stock. They debated the cause of this change, apparently without noticing that the reason poor immigrant women were not having abortions was because of the expense.

The arguments against birth control and abortion in the second half of the 19th century were based on a strong fear that the increasing numbers of new "bad" stock would drive out the old, "good" stock. It might seem more reasonable today to have extended birth control and abortion services to the poor, but at the time, it was far easier to enforce reproduction than to insure limitation. Furthermore, as both Reed and Mohr extensively document, no money was to be made from the birth control business (by doctors) until the state of the art had advanced to the point that doctors could claim its regulation as their own.

The doctors were afraid of the well-to-do being outbred by the poor, but they also, according to Mohr, "seem to have been deeply afraid of being betrayed by their own women. Regular physicians were among the most defensive groups in the country on the subject of changing traditional sex roles." The fear that women might destroy society by refusing to breed found expression in the rant against "love of fashion" and "unnatural depravity"; today the same emotion may be found in contemptuous references to women who want abortions "for convenience."

By the 1880s, state legislatures had effectively outlawed abortion. The doctors, having consolidated their position around the issue, lost all further interest in it. Not until 1973, after the period of rapid change that James Reed examines, did the Supreme Court overturn the existing laws in favor of giving every woman the right to choose abortion during the first trimester of pregnancy.

Mohr concludes: "To oversimplify greatly, the two chief pressures that produced the anti-abortion laws in the first place—the short-term interests of regular physicians in the face of the unprecedented crisis in the history of medical practice in the United States and the shift in the socio-demographic role of abortion in America are truly unique historical circumstances. It is arguable not only that both were necessary to the policy transformation that took place in the 19th century but also that neither will ever recur in the same terms, much less at the same time."

We tend to forget that even the dissemination of birth control information remained widely illegal in the United States until 1960. James Reed writes: "The systematic suppression of birth control information began as a small part of a great crusade to make America live up to its sexual ideals." Women, beginning with the abolitionists, had begun to speak out against social evils, and their campaigns against alcohol, pornography, venereal disease and prostitution resulted in a demand for higher moral standards, much higher than the old double standard. Doctors, seeking to strengthen their own public integrity and having so effectively aroused the nation against abortion, found that the public would not accept any support of birth control for the masses. The notion of the separation of sex from procreation seemed obscene, unsettling, and not on a high standard.

It would be funny, if it were not so infuriating, to read of concerned men's attempts to figure out why the poor had more children. Were they biologically more able? But however much the elite worried about the rapid reproduction of the poor, it happened to be socially undesirable to help the poor stop having children, because those children provided the very pool of cheap labor which made it possible for the native stock

FLOATING THE BIG PINEY

How the river cools your blood is something you can't
explain: you search the bottom stones for words
unscientific, words fleshed with the sound of sense,
maybe a chant laid upon the water the time
words were all and fathers sang their sons ways
to be and the river flowed sure of its pace.

You lie back in the canoe. Your own child points the bow
now into the blue breath of sky: trees course
overhead, and your eyes bend with pillars
of air, the cornering birds; you lie back into
the dream you know you'll have just once, a token
from a far time, a river you can't explain.

All words are lost and you want to sing the meaning
and origin of things, to make an appositive
of light, something solid as a stone to hand
this man-child. But all you have to offer is
pause, the silence of water and the small
knowledge that the river takes you over all.

Jim Barnes

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to enjoy the opportunities of the American life which went along with having fewer children. The circularity of the situation was not clear at the time, and women of all classes came in for much blame. Luckily, before the turn of the century women themselves, led by Emma Goldman and later Margaret Sanger, began to talk about sex, and health, and other forbidden subjects.

Even today, when we have the pill and the coil (the side effects of which Reed dismisses far too easily) our public policy is no less absurd and contradictory. We punish poor women for their transgressions of our ideal morality by denying them Medicaid abortions, and —apparently to make sure of a continuing supply of cheap labor—we deny them access to birth control information. One half of all the sexually active teen-agers in this country have no access to such information and half of the 9.9 million low- and marginal-income women in need of federal programs are not served. Only 2 percent of the 1976 National Institutes of Health budget went for birth control research, and only 20 percent of public hospitals, *before* the passage of the Hyde amendment denying Medicaid for abortions, provided such services.

Meanwhile, legislators continue to complain that if welfare services are raised to adequate levels for survival, poor women will just have more children. It is not yet past history when Reed notes that "the course of the American birth control movement in the late 1930s and 1940s can only be understood, however, in the context of a society that doubted its virility. . . ."

Nevertheless, women began to insist on their rights, doctors were (partially) persuaded that birth control clinics did not necessarily mean socialized medicine, and scientific progress made population control not only possible but lowered the death rate so that such control became publicly perceived as desirable.

Reed reminds us that in 1938 Gunnar Myrdal delivered the Godkin Lectures at Harvard, and discussed "the prospect of depopulation as the ultimate indictment of the capitalist system." He saw it as a compelling justification of fundamental social reforms. "The solution was not suppression of birth control information and enforced biological slavery but 'vast distributional reforms in the interest of families with children.'" Myrdal was probably right. Otherwise, why would today's right wing, presumably not interested in distributional reforms, be using anti-abortion as a rallying cry for a constitutional convention which will get the government back on their perception of the right track?

Abortion and birth control are still described as emotional and explosive issues. We have, at the very most, only begun to confront the implications of the fact that we might now determine our own reproductive destinies. As James Reed concludes: "Birth controllers had to work within the value systems of the societies they sought to change because their programs required the support of government and professional elites. They believed that their reform, if adopted, would have subtle but profound effects on social mores. The changes required in order to deliver contraceptive services to everyone were revolutionary. That is the major reason why they were not accepted." □

Shades of Gray

THE AMBIVALENCE OF ABORTION. *By Linda Bird Francke. Random House. 261 pp. $10.*

LINDSY VAN GELDER

Any book about abortion that includes the word "ambivalence" in its title has to be a welcome addition to the literature on a subject that is quickly becoming the most divisive moral and political issue in this country since the war in Vietnam. The fact that Linda Bird Francke is a lucid writer and an apparently indefatigable and sensitive interviewer further isolates *The Ambivalence of Abortion* in the lonely terrain between the hard-line pieties of the Right-to-Life movement and the sloganeering of pro-choice feminists.

There are women who would never have an abortion under any circumstances and others for whom the experience is no more complicated, emotionally or morally, than having a wisdom tooth pulled. But a great many of us—whether we've actually had abortions or just an agonizingly late menstrual period or two —fall into neither category, and until now we have had no public guides or spokeswomen. Francke herself, an acknowledged pro-choice advocate, had an abortion several years ago when the youngest of her three children had finally reached school age and she herself had begun a full-time job in publishing. She and her husband—neither of whom had been using any contraception— reached a joint decision that "there just wasn't room in our lives now for another baby."

But once inside the cheerily decorated abortion clinic Francke writes: "Suddenly the rhetoric, the abortion marches I'd walked in, the telegrams sent to Albany to counteract the Friends of the Fetus, the Zero Population Growth buttons I'd worn, peeled away, and I was all alone with my microscopic baby. There were just the two of us there, and soon, because it was more convenient for me and my husband, there would be one again. . . . Though I would march myself into blisters for a woman's right to exercise the option of motherhood, I discovered there in the waiting room that I was not the modern woman I thought I was."

Eventually, Francke's resentment at being so unprepared for the emotional consequences of abortion led her to write an anonymous memoir on the Op-Ed page of *The New York Times* which, to her alarm, was reprinted by the thousands by Right-to-Life groups. (One Catholic mailing omitted the sentence announcing Francke's intention to get an IUD.) Today she feels that her decision, on balance, was the right one. Her book—part history, part political analysis, part personal testament, but largely a compendium of interviews with abortion patients, their lovers, husbands, parents, and clinic personnel—is, however, an attempt to illustrate that even the right decision is not necessarily easily made or lived with.

In addition to her personal credentials, the author is an editor at *Newsweek*, a contributing editor to *New York* magazine, and a widely published freelance writer. It is probably not surprising that *The Ambivalence of Abortion* —published a full five years after the Supreme Court ruling guaranteeing women the absolute right to terminate first-trimester pregnancies and eight years after abortion was legalized in New York and other states—was written not by a feminist ideologue (although many of them say privately what Francke here says publicly) but by a professional journalist accustomed to dealing with the shades of gray inherent in any black-and-white debate.

The Right-to-Life position precludes ambiguity. If one believes that a foetus

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is a full human being and that abortion constitutes infanticide, the logical moral conclusion is to put a stop to it. The feminist position on abortion does, on the contrary, lend itself quite naturally to embracing the ambivalence that forms the texture of Francke's book. If one's bottom-line credo is that no woman should be forced against her will to serve as an incubator to a nonviable foetus, it should still be possible to concede that the foetus may be a life form, that too many women get pregnant for neurotic reasons or out of incredible carelessness, and that even a safe, legal, affordable abortion can be a traumatic experience for everyone involved.

Put on the defensive by the financial and political clout of the opposition, the pro-choice movement has, however, chosen tactically—and I think, unfortunately—to present its case to the public with the same unambiguous certitude as the Right-to-Lifers. Show us a blown-up poster of tiny, perfect foetus feet? We'll counter with a giant glossy of a woman butchered in a back-alley abortion. Slender time and resources are available for warning women about the possible consequences of abortion. And while most feminist spokeswomen are careful to point out that they are pro-*choice*, not pro-abortion, the myth persists that modern abortion is an unqualified boon to womankind.

From feminist perspective, Francke's most disturbing interviews are the ones depicting abortion as anything *but* the expression of a woman's right to choose and to control her own destiny. "Frances Alden," a 25-year-old Los Angeles clinic volunteer now contemplating single motherhood, makes the telling point that easy abortion relieves society of the need to provide a support system for all women whose aspirations *do* include children: "The reason I had my abortion [at 19] was because I was a poor working-class woman who was trying to go to school. . . . I had no choice." A particularly heartbreaking case is 18-year-old "Shelby Winters," married for a year to an Indian farmer and living now with her impoverished in-laws who disapprove of the pregnancy. She cries uncontrollably as she talks into Francke's tape recorder:

> The problem is deep down I want to keep the baby. I realize it's not the smart thing to do. . . . I love my husband. I just think it would be better for him if I have the abortion. I'll get over it. . . . I know I can have another baby someday. But it's this one I love now. I just love her so much. But my mother-in-law says we got to be off the farm in two weeks—if I keep on having my baby.

"I'm doing it for *him*" is a recurrent motif throughout the interviews, among middle-class as well as poorer women. While coerced abortions are certainly no worse (and indeed arguably better) than shotgun marriages, one realizes from Francke's book how much the availability of abortion has obscured the turmoil that *any* pregnancy brings to a relationship. The interviewed women weave a tapestry of fury, distrust, confusion and hurt toward men who have somehow let them down. Some become frigid, celibate, or promiscuous after their abortions. "In my research," Francke writes, "almost every relationship between single people broke up either before or after the abortion. What had been pleasure became pain." The men who do stick around are sometimes suspended between helpless rage at the destruction of part of themselves and fumbling attempts to be supportive. And since abortion is supposedly a "solution," many men and women seem doubly mystified by the depth of their emotions.

There are, at the opposite extreme, the gum-chewing teen-agers who see abortion as a mere interruption in their social lives—and who will be back at the clinic in six months. There are frozen-faced mothers who cannot deal with their daughters' sexuality, frustrated counselors and clinic technicians with tales of foetuses scooped into "a bucket of formaldehyde, just like Kentucky Fried Chicken," and a number of people for whom abortion was a turning point that brought maturity.

The Ambivalence of Abortion is painful reading. Francke asks a great many troubling questions, and concludes that "there are no neat answers to the questions of abortion, and perhaps there never will be." Right-to-Lifers will undoubtedly attack the author for her unambivalent political conviction that as bad as things are, illegal abortion would solve none of the problems and would create terrifying new ones. They will then most certainly excerpt some of her material for their own purposes—thus making Francke vulnerable to feminists, many of whom will surely criticize her for giving aid and comfort to the enemy at a time when abortion rights are under siege. For those of us who share both Francke's politics and her emtional ambivalence, however, this book is a long-awaited validation. □

Not a Prom Queen

BURNING QUESTIONS. *By Alix Kates Shulman. Alfred A. Knopf. 364 pp. $8.95.*

ALDEN WHITMAN

Alix Kates Shulman is an intelligent and exciting novelist who ventures to tackle contemporary issues in a serious fashion. Six years ago, in her first novel, *Memoirs of an Ex-Prom Queen*, she explored modern urban marriage from a feminist perspective, illuminating with extraordinary craftsmanship one woman's liberation from the bonds of a chauvinist husband. This, her long-awaited second novel, is of a different order of complexity and magnitude, for it seeks to describe the budding of a revolutionary feminist within the context of the silent, the beatnik and the activist generations. *Burning Questions* is thus a social-realist novel of political ideas. Because it intends to promote feminism while contributing to sophisticated social and political discourse, its significance is very great indeed.

Alden Whitman is author of The Obituary Book *and a well-known free-lance literary critic.*

Shulman has fashioned her novel as a first-person narrative and philosophic memoir of an articulate Indiana-born woman, Zane Brentwood, who fleeing to Greenwich Village in the 1950s, became successively Zane Thompson and Zane IndiAnna as she passes through various stages in her political development. The transformation of a young idealist into a more mature urban rebel—the transition from the "I" to the "we," from the personal to the collective consciousness—evokes Shulman's best literary talents while offering her the most nettlesome problems as a writer.

Zane is the voice of *Burning Questions*, its center of consciousness; but the novel's politics are all Shulman's—her version of dialectical materialism. Zane is perceived as evolving through a process of thesis, antithesis and synthesis over time. Her interactions with experience are a two-way street; some are direct, more are subterranean; and they are all transformed in a quantum growth, a qualitative change in Zane's understanding of her world and her role in and against it. The basic flow is between historical experience and an expanding informed intelligence, be-

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tween practice and theory. Since the novel is bound by its social realist conception, the result of Zane's dialectical transformation is the expression of a tentative ideology, one that lays the foundation for a new generation of Zanes without itself going beyond the present stage of the feminist movement except to raise "the burning questions" it must confront.

To give her social realism a heightened sense of authenticity, Shulman titles Zane's memoir "My Life as a Rebel," a borrowing which has resonance because Angelica Balabanov had used it as the title for her autobiography. Balabanov, it will be remembered, was a Left Socialist whose ambiguous career included early editorship, with Mussolini, of *Avanti*, the Italian Socialist periodical; association with Lenin and Trotsky in the Bolshevik Revolution; and service as the first secretary of the Third International. Disillusioned because the revolution did not produce instant communism, Balabanov left the Soviet Union, taught languages in Vienna and died there thirteen years ago. A sentimental Socialist who was ultimately closely identified with Trotsky, she puzzles me as a role model for Zane unless I have missed an intended irony in Shulman's choice of Balabanov as a source of revolutionary feminist inspiration. As an archetype, she conveys historical irrelevance, and a muddled saintliness, not practical revolution.

Fortunately, *Burning Questions* does not rely for its force on the questionable Balabanov metaphor; it is sustained instead by Shulman's intensely lifelike creation of Zane, a woman who chooses to join up with history in the form of feminism without losing her new-found identity as a woman and a person. We begin with Zane as a questing child in Babylon, Ind., an odd child with grandiose ambitions to dig a hole to China. Apart from her name, what makes her distinctive is her precocious perception of social inequity and injustice. Not a prom queen, Zane spends a serious four years at high school, honing her brain as a debater and discovering a wider world through books. The key book is *Middletown*, just the right book at the right time (the early 1950s) to feed an inquiring mind. After two restless years of junior college, she flies from her uneasy nest to Greenwich Village in 1958, determined to find life.

Some of the best reading in Shulman's book concerns Zane among the Village Beats who scintillated briefly in their grubby surroundings. Shulman captures their heady nihilism and Zane's infatuation with it as the mirror image of Babylon, Ind. Told with wry humor, her concomitant search for self-improvement through sex ends in disillusionment and retreat. "I'd married with the best of intentions," Zane's memoir says, adding: "I was secretly aware that by the bohemian creed I had espoused, marriage signified capitulation, but with the confusion of those who marry at 20 and the impertinence of youth, I . . . determined to let marriage alter nothing."

Well, of course it did, but how else are even the brightest to learn except by abstracting knowledge from personal experience? Shulman's portrait of the marriage is a quick sketch, yet it boldly outlines a union of disparate values full of the conflicts that were endemic in many marriages of the 1960s. In Zane's case, she was operating under an aunt's injunction—"It is required of a person that he should share the passion and action of his time at peril of being judged not to have lived"—while her husband is content to be a spectator. Push comes to shove when Zane, three youngsters and all, is caught up in the nascent anti-war and women's movements, and she breaks away, at first tentatively and then for good into these larger concerns, especially into the supportive feminist movement. In illuminating the liberated woman's agonies over matters as homely as child sitters as well as the larger issues of political action, Shulman is again utterly realistic about the personal consequences of social actions.

Zane's epiphany comes with her understanding of the political strength of sisterhood; she is emboldened by it to rebellion. At the same time, she pauses to assess the state of feminism today. It is an honest valedictory: "Some things were different because we passed this way." She goes on: ". . . At least for some of us our lives had improved. We lucky ones spoke up now sometimes and fought back when they called us names—that was worth a lot. And some of the mothers were no longer alone. Now when you lost your job, when they cut back on your day-care or struck down your maternity benefits or phased out your function or negated their affirmative action, you were likelier than before to have someone understanding to talk to. . . . Halfway, but no better than halfway."

It is on this note of qualified optimism that Shulman concludes a novel whose careful tapestry I have only suggested. In not asserting more for history

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than history claims for itself, Shulman is concentrating on Zane's backing-and-filling growth as a revolutionary. We feel certain at the end of the book that she will persist and overcome. And that, in the final analysis, is what is required of a rebel—that and the ability to pick up the pieces and arrange them in a coherent pattern.

Burning Question is a slow, almost painfully slow, novel. But in opting to fictionalize human learning, Shulman is obliged to tell us how a "real" person comes to acquire wisdom. In doing so, she has written an important, credible and mature book. □

COMING NEXT WEEK
Special
Spring Book Issue

Before We Become Them

GROWING OLD IN AMERICA. *By David Hackett Fischer. Oxford University Press. 242 pp. $10.95.*

THE PURSUIT OF DIGNITY. *By Bert Kruger Smith. Beacon Press. 154 pp. $9.95.*

CARING FOR YOUR AGED PARENTS. *By Earl A. Grollman and Sharon Hya Grollman. Beacon Press. 149 pp. $8.95.*

MOPSY STRANGE KENNEDY

Old age is getting the publishing rush now that youth got a few years back, and not surprisingly as the much publicized young begin to look forward to the time when they will have to deal with the problems of age themselves. The new wave of books on old age and dying represents a relatively sudden—and appropriate—reaction against the hostility to old age that is implicit in the worship of youth. No sooner do words like gerontophobia and ageism make their appearances than solutions and elaborate propitiations (half-addressed to the future old person in ourselves) come forth.

Historically, as David Hackett Fischer describes in *Growing Old in America*, attitudes toward old people have run the gamut from reverence to savagery. Herodotus tells of the Issedone tribe who gilded the heads of their aged parents and offered sacrifices before them; on the other hand there were people of Bactria who fed their old folk to dogs. Before the invention of writing, though, for the most part, the old were the essential transmitters of wisdom. Thereafter, the importance of that particular skill was lessened, and senility became a personal problem, not a group threat.

In the ancient civilizations of India, Rome, China and Greece old age conferred a weight and status in the various realms of government, church and family that enhanced the end of life rather than diminishing it. If anything, old men were seen as too powerful as the satirical bite of plays by Aristophanes and Plautus reveal. In the 18th century in America, the old were in short supply and so held in high regard; the preponderance of youth made old age an object of veneration, the reward for earthly toil and possibly even a sign that one was hinting by one's very survival at being one of the Elect. This was, of course, the privilege of the very few; in 1790 less than 2 percent of the population was 65 or older compared with the swelling 10 percent today.

The ominous shift started to occur in the mid-1800s with the advent of modernization and its cheerless by-products. Modern health technology mixed its blessings by creating a glut of the aged who, in turn, were forced into a tenuous role thanks to retirement. The young concurrently rose in stature, and thus began the wrenching of the family fabric we see so much of today. Even the democratization of education, which seemed a good thing in itself, isolated the old by once again making them obsolete.

Death, on the other hand, became less democratic. Those who had formerly done the dying came from all stages of life, often enough from childhood, but with improvement of health standards and immunology, the connection between old age and death became more clearly linked than it had been before; age and hopelessness became comrades in the public mind and at the same time youth strenuously assumed for itself what it saw to be the higher virtues at the other end of life.

But quite apart from questions of productivity and moral authority—old age became, most strikingly of all, a problem of poverty. Although veterans of the Civil War and World War I were lavishly pensioned, as the century advanced the absence of a national pension plan became the central issue of the aged. The movement which led to the Social Security Act of 1935 represented a first step in viewing the problem of aging as amenable to alleviation through social policy. This very solution, of course, created new problems, among them the fact that the ratio between the people paying into Social Security and those receiving benefits, now, some forty years later, is beginning to reverse itself in such a way that there will presently not be enough for the takers to take, while the givers will be overburdened with giving.

To correct this inefficient and failing method, David Fischer suggests that it would be cheaper and easier to give each American a grant of capital at the beginning of life instead. Invested at 8 percent, this gift of, say, $1,400, would grow in sixty-five years to $225,000! This in turn would provide the elderly person with an income of about $15,000, which far outstrips the present Social Security provisions. Not only would this invigorate the capital stock of the nation, it would—insomuch as money can heal wounds that are only partly financial—confer greater security and independence on the elderly, who now tend to waver between rocky self-sufficiency and guilty dependence.

Directly adjacent to the issue of money is the question of how the aged can and should live. Bert Kruger Smith, author of *The Pursuit of Dignity*, is sensitive to the way in which images—memories, informing ghosts, and the set-design of one's life—dictate a sense of connection and well-being. What she proposes is day care—an intermediate alternative between living at home and resigning oneself to the total care of a nursing home. In Smith's terms, day care can be anything from an arrangement which is primarily social to a hospital setup which nevertheless still allows people to live at home. Among other advantages, these centers could cut down on the number of people who enter nursing homes for reasons other than medical necessity.

Cost problems beset plans for these day-care institutions which would seem, on the face of it, to be manifestly

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cheaper than twenty-four-hour care. On the theory that one attends such a center less than daily, there would still come a point after which an elderly day-care patient is incurring as much or more expense than he would in a nursing home. So, at least, says the gloomiest report. As a result, such alternatives to institutionalization have been minimal so far.

But even if these alternatives to hospitals and nursing homes are not cost-effective, Bert Smith points out that this is neither necessarily unalterable nor the only point to consider. Whatever can make the aged continue to be part of life—family life, productive work life, psychologically active life—rather than objects of airless custodial arrangement which may actually hasten death needs to be considered, and this book is a good combination of feathery uplift and hard facts on the subject.

In yet another crenulation of the subject, old age becomes an emotional and therapeutic issue, mixing sadness and guilt, and reversing the ways in which resources are distributed between parent and child. *Caring for Your Aged Parents,* written appropriately by a father and daughter, is a kind of self-help book on the subject that speaks quiet home truths from two points of view—old and young. Although most self-help books contain a nauseating supply of self-serving messages designed to reduce guilt that might actually have some reason to exist, this one, I think, brings up the painful issues surrounding the care of the old, but never reaches the point where shying away from responsibility is ennobled (a familiar message in anti-guilt books). The situation of old parent and middle-aged child is one in which no one is entirely an adult, and various flavors of neediness abound and conflict. Neither the issues nor the solutions here are especially new (the nursing home question, the particulars of sensory and medical slippage are discussed along with common-sense advice), but the various viewpoints thread nicely, from problem of parent to worry of child and back again in a way that is more striking than mere description, and more sympathetic to ambiguity than mere advice is.

These books, and the mere fact that there are so many of them, are a good sign that if we don't, like the Issedone, gild the heads of aged people, we at least recognize, with hectic guiltiness, that something must be done in attitude, and in social policy before *we* become *them.* □

THEATRE/Harold Clurman

Christopher Durang's *A History of the American Film* is a great foolery (Anta Theatre). It might also be described as a crazy quilt stitched together by a loose thread of a "story" and a shred of an idea. Much of it is as funny in presentation as in writing. The clever setting is by Tony Straiges, the lighting by William Mintzer. It is directed with considerable humorous invention by David Chambers and remarkably well performed by an endearing company of dedicated zanies.

The vocabulary of American film, from the early days to more recent ones, is employed with especial reference to various news features or, if you will, historical events of the past sixty years or more. What we see is supposed to be a film (and people watching several different films), but the convention is not strictly adhered to. Everything goes: it is all slapdash improvisation, naively sophisticated, collegiate, smart-ass. One can think of it as vaudevillesque surrealism or self-congratulatory nonsense. If there is sense—and there is some—it may be thought of as cartoon commentary on the imbecilities of the passing scene.

There are allusions to both World Wars, to popular slogans, to period fads, to religious confusion, to divers political phenomena (radicalism, McCarthyism), and to tidbits that were grist to the journalistic mill over the years. It ends with the "prophecy" of a big bang-up, an all-devastating bellicose doom: the spirit is cynical. But we don't take it seriously—it is all for fun, and in this it is typical in several ways.

It certainly doesn't hurt, it tickles. It is significant only in that its significance is oblique. It leaves no enduring impression, except that we may remember some of its jokes and that we passed the time in momentarily delighted surprise. That's enough, isn't it, for an evening on the town.

An exemplary cuteness is *We're in a Salad,* a lampoon of a Hollywood production number à la Busby Berkeley, in which each girl represents a vegetable: Bean, Tomato, Celery, Cucumber, etc. There are nutty songs by Mel Marvin and all sorts of trick business and scenic stunts. Best of all is the cast, encouraging as a demonstration of how many gifted players we have among us.

April Shawhan as Loretta—super-blonde, super-blue-eyed, simperingly innocent, suffering and loyal in the manner of heroines of the silent movies—is an actress who has played Shakespeare and now in this jamboree is fetchingly dotty. Swoosie Kurtz whom I have found capable in several previous productions of incisive characterization, now as the female nemesis of the "plot," reveals herself a versatile clown. Maureen Anderman, memorable to me as the warmhearted lady lizard of Albee's *Seascape,* is particularly good as a goofily intense radical who speaks at all times of "we, the people." And Gary Bayer, who in the past has acted everything from *Our Town* to Gorky's *Lower Depths,* now goes through the throes of a gangster existence with a heart of gold and the right amount of absurd conviction. But, as I have indicated, there is not a clinker in the barrel.

The show might lend itself to study by film and stage historians, by journalists, and sociologists. Or it may be entirely dismissed by certain of the more serious-minded! On the whole I see in it something characteristic of the present (prosperous) theatrical season: it is animated, muscular, proficient and vain, not to say void. *Deathtrap* (Music Box) is a self-mocking thriller, *On the Twentieth Century* (St. James) is brashly energetic in its cheekiness, *Dancin!,* Bob Fosse's terpsichorean entertainment at the Broadhurst, is all mechanical propulsion, a veritable engine of physical verve with no emotional content, and here in this *History of the American Film,* with its elements of satirical, perhaps even "intellectual," substance, all is forgettable mirth. Oh well . . . the year is 1978! □

FILMS

ROBERT HATCH

One might expect that an experienced director, which Claude Berri is, could make something excellent out of his memories of the rites of passage from adolescence into manhood. He has been working with Alain Cohen through a series of autobiographical films (*The Two of Us; Marry Me, Marry Me*), starting when the young actor was still a child. It is an attractive idea, one that recalls Truffaut's series, with Jean-Pierre Léaud playing a much more tormented youth than Berri's somewhat lumpish Claude. But *The First Time,* in which Claude undertakes to become a sexually participating member of society, is not an ingratiating picture, nor

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indeed an interesting one.

The trouble could be that Claude runs with a pack of his peers, any of whom may grow into a quite tolerable man, but all of whom in the present are obsessively bent on conforming to the lowest common denominator of their age group. They are ignorant and incompetent, burdened by insecurities which they mask with improbable boasts and witless laughter. They are utterly vulnerable and, considered individually, undoubtedly touching; but seeing them en masse, as they are shown during most of this picture, one might well say that only their mothers could love them. Truffaut's Antoine, in addition to commanding a weirdly precocious style, was a loner, and that makes a difference. I can remember only one really satisfying movie about a gaggle of youths, Fellini's *I Vitelloni* (1953).

Claude is an utterly normal teenager, and Berri seems to remember that period of his life in terms of sexual clichés: "interference," as the British say, from an older male cousin; the obligatory visit to a tolerant prostitute; a father's inarticulate attempt to talk man to man; the experienced girl who is to be impressed with verbal lechery borrowed from paperback pornography; the somewhat older woman who finally demonstrates that sex really is a sport worth learning. Claude pouts and snivels, swaggers and hangs his tail, and indulges in fantasies of flying across the sea with the love of his life, but he has a beautiful smile. He is a nice boy—most boys are—and Cohen plays him with the authority and ease of being himself. I'll be glad to meet them both again—character and actor—when they've grown up a bit.

Judging from its title, Emile Ajar's novel, *Momo*, centers on the boy in the situation, and those who have read the French text tell me it is a rigorous tale. But *Madame Rosa*, from which it derives, focuses on an aged, dying, but implacably humane and courageous whore of that name, and is a vehicle for Simone Signoret's formidable repertory of histrionics. It is a fairy tale of surrogate motherhood and filial devotion, contrived with complete success to set an audience weeping profusely from the fumes of sentimentality.

Mlle. Signoret is in fact playing that time-tested part, the gallant trouper. She heaves her heavy body about in a way to make you ache with sympathy and, since the camera is much of the time 8 inches from her ravaged face, one observes, as though at a clinical demonstration, how a skilled thespian causes a gamut of emotions from abject terror to cunning dissimulation to pass rapidly before the viewer's eyes. Madame Rosa, who is suffering from more fatal diseases than an intern would see in a year on the charity ward, breathes heavily at the least exertion, and since we are told that each breath may be her last, some suspense is thus generated. Meanwhile, the faithful Momo is ever at her side, a ministering angel at the age of 14. He is an Arab, she is Jewish, as is the old doctor (Claude Dauphin) who attends her; so there is opportunity for some comforting and timely humor on the subject of personal affections that defy group hostilities. The plot, into which I shall not venture, instructs us that, in the lowest depths of society, everyone, irrespective of race, religion, or disreputable means of livelihood, loves and cherishes everyone else.

Simone Signoret is indeed an accomplished woman, and I would rejoice to see her in a work worthy of her. But I have no respect for Moshe Mizrahi's star vehicle, crafted to show off a talent, like putting a horse through its gaits, the while tickling an audience in its soft spots. It is the junk food of theatre. □

MUSIC

DAVID HAMILTON

Mr. Hamilton continues the discussion of music available on radio—in this case new music—which he began in the issue of March 18.

Michael Tippett's Symphony No. 4 was broadcast late last year in the Chicago Symphony Orchestra's national series; it had been first played in Chicago on the concerts of October 6 and 8, 1977, and repeated in New York the following November 4, during the orchestra's fall tour. Written as a single movement that incorporates traditional symphonic patterns to the extent of including a recognizable slow movement and scherzo among a good deal of highly contrasted recurrent material, it's not a hard piece to follow. Chicago audiences may have found it more problematical than radio listeners, however, for the Orchestra Hall program book proffered two "analyses" (one by a spokesman for the composer and another, less convincing one, by the orchestra's regular annotator) that construed certain formal elements rather differently. (It cannot have helped, either, that one of the music examples cited in the second analysis was incorrect.)

Program notes aside, though, there's nothing especially subtle or obscure about the Fourth Symphony's progress. The musical ideas are distinctive in character, clearly associated with particular instruments or choirs, and they recur in explicit, easily recognizable forms. The sections are demarcated by pauses or moments of repose; when contrasting materials are presented simultaneously, the orchestration differentiates them amply. Despite the frequent use of pitched percussion instruments to color melodic lines, the predominant tones are in the gray and brown range of the spectrum; closely massed chords in eight parts for a single choir tend in that direction, even if they move fast and even if they are played by the Chicago Symphony under Georg Solti (and it must be said that they were played remarkably well, especially by the brass section).

You always know where you are in this piece, then—and it's not a cheerful place. The material can be athletic, but it is never buoyant; the slow melodies are expressive but never luxuriant; the climaxes are grim and effortful, and they end with unanswered questions. At the conclusion of the symphony, angular virtuoso passage-work alternates with and gradually succumbs to quietly "breathing" chords and the sighing of a wind machine—a place emptier even than the somber enough beginning.

Tippett's outlook was not always so pessimistic, as recent performances of his 1942 oratorio, *A Child of Our Time*, have recalled. A particularly eloquent statement of it, broadcast from Cleveland some weeks ago, was conducted by Lorin Maazel, compellingly sung by the admirable Cleveland Orchestra Chorus and particularly by sporano Judith Blegen. This was far more coherent and involving than the older of two available recordings (Argo); I haven't heard the newer one, conducted by Colin Davis, whose Boston Symphony performance of earlier this season should also be turning up on the radio in a month or so.

Leonard Bernstein describes his *Songfest* as "a cycle of American poems for six singers and orchestra." (First performed in Washington in October, it was played on the New York Philharmonic's concerts of December 15 and 20 and broadcast on their radio series in early February.) Thirteen poems, intended to illustrate "the American artist's experience," are set as twelve separate pieces (two poems, by Langston Hughes and June Jordan, are woven into a duet); six are solo songs, in two

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groups of three framing a group of ensembles (two duets, a trio and a sextet) and framed by two further sextets.

The most conspicuous exemplars of this kind of "anthology" song cycle are by Benjamin Britten: the *Serenade* and *Nocturne* (both for tenor and chamber orchestra) and the *Spring Symphony* (with three soloists, and a chorus as well; Bernstein treats his ensemble in choral fashion at times). There are echoes of Britten's vocal idiom as well, not only in a canonic trio for three women. But then, according to the program notes, "The strongest binding musical force in the cycle is that of unabashed eclecticism" (that annoying but fashionable word, the rallying cry of musical Luddites who for whatever reasons are inclined to ignore or resist or misunderstand fully formed personal styles, of which there are quite a few around today).

The composer's spokesman sells *Songfest* short, I think. There are many binding—and truly *musical*—forces at work in the cycle: motives, harmonies, the rhythmic treatment of the text (often flexibly sensitive to verbal rhythms, making good use of the familiar Bernstein armory of mixed compounds of duple and triple groupings). It all sounds like Leonard Bernstein, in fact—you couldn't mistake it for anyone else.

This is sometimes a very good thing. Bernstein responds vividly to the lively rhythmed poems. The loping beat of the setting of Ferlinghetti's "The Pennycandystore Beyond the El" is picked up from that title line, and the song indulges in some pleasant pictorialism on its ways to a nicely scaled climax (there's some closet twelve-tonery in this song and elsewhere). The central ensemble, on e.e. cummings's "if you can't eat you got to," has wit and effective contrasts. The division of "Storyette H.M." between two voices neatly clarifies the sense behind Gertrude Stein's orotund syntax, the ostinato rhythms of which are captured in a flowing irregular melody. Gregory Corso's "Zizi's Lament" brings forth touches of parody—even (if I am not mistaken) a Casbah takeoff on the opening of the "Nile Scene" in Verdi's *Aida*—but it seems less focused than some of these pieces. And the Beethovenian references in the Hughes-Jordan duet don't sit there very comfortably.

Three poems about love, by Anne Bradstreet, Conrad Aiken and Edna St. Vincent Millay, are as if motive-bound, melodically gray and literal. The best tune in the set goes with Walt Whitman's "To what you said. . . ." It's played first in the orchestra and then hummed by the other singers behind the bass soloist's rather less cantabile presentation of the poem; I can't escape a feeling that the tune was written first (perhaps for some other purpose?) and the poem then plastered on—though not insensitively, to be sure. The final sextet is an upbeat treatment of Poe's "Israfel," the irregular stanzas of which might well have suggested the music's metrical irregularity, had that not already been a feature of Bernstein's style.

If there's a troublesome disparity here, I think it rests, not in style but in scale. *Songfest* wants rather obviously to be a "major statement," but it stubbornly remains a sequence of sometimes eloquent small and medium ones. Perhaps it is that the pieces involving grand orchestral emphases (notably a poem in Spanish by Julia de Burgos—the music is "in Spanish," too) seem much less about words than the others, more about musical assertion of "bigness." This sort of disparity might have been mediated by a continuous musical thread (such as Britten provided in the *Spring Symphony*), or perhaps the cycle might have been happier if set more consistently in chamber-orchestra terms. At any rate, *Songfest* was admirably served by the six soloists, who had all also taken part in the Washington performances (and in a recording made at that time): Clamma Dale—downright spectacular in that Burgos song—Rosalind Elias, Nancy Williams, Neil Rosenshein, John Reardon and Donald Gramm. The composer conducted, and well. □

DANCE

NANCY GOLDNER

In March, Merce Cunningham and Dance Company presented two weeks of Events at the Roundabout Theatre. The Roundabout is, I think, the perfect theatre in which to see Cunningham; if too austere to be considered intimate, it is small enough to give everyone in the audience a close-range view of the dancers and of the exquisite details in Cunningham's choreography. The season was relaxing, too, without the hoopla attending a run on Broadway (where the company appeared a year ago last January), and without the unpleasant mystique that surrounds the company when it performs at Cunningham's Westbeth studio. Granted the financial necessity of performing there, the clubhouse atmosphere and limited seating at Westbeth nevertheless highlight the pernicious notion that Cunningham is the elite of the underground. Even if he is, it is more apt to describe him as a great choreographer and great dancer. Yet some people find Events as unaccommodating as I find Westbeth. Choreography that is meaningful when given titles and punctuated by intermissions becomes, in their eyes, a sort of nonentity when performed anonymously in Event structure, with excerpts from different ballets run in consecutive order for ninety or so minutes. During the Broadway season last year the company staged titled ballets in their entirety, and I found the experience not much different from the Events series. Both kinds of program break down into parts, and parts of parts, some more pleasurable or invigorating than others; and the same dance can assume a slightly different tonality on different occasions, although Events dramatizes this mysteriousness much more than do repertory programs. Basically, the guiding structure behind conventional repertory programs and Events is the same, juxtaposing fast dances with slow dances; group dances with individually oriented ones; big groups with smaller groups; close, tight footwork with broader movements. If one had to choose a basic formula for entertainment, the device of contrast would be it, and of all choreographers, Cunningham is its most devoted disciple.

A concise and brilliant example of contrast could be enjoyed during the closing weekend of Events. It was a solo for Karole Armitage, or rather two Karole Armitages. One of the Karoles was all torso, craning far to the side, righting herself, and then plunging forward. It was big-scale dancing, showing us a long, limpid body ricocheting from one extreme silhouette to another with buoyancy rather than stress. The second Karole moved as tiny, rippling particles. These movements showed us her arms and legs darting through space in a dazzling continuum of crinkles, starting at the hips and shoulders, gathering into a climax of angles at the knees and elbows, and then smoothing out at the fingers and toes. Either of the Karoles (stormy weeping willow or eccentric caterpillar) would have sufficed, but the contrast of currents was what made this solo and the long dance that branched out from it positively glisten. Seeing this solo twice in the same context would have been wonderful enough, but it is the nature of Events to juxtapose the stability of set choreography with a changing environment. In one Event Armitage's solo was bedded down in a rhythmically smooth score by Jon Gibson. The music's neutrality gave the dance's virile dynamics a hu-

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morous quality, and Armitage's red-and-pink costume seemed both a confirmation of the choreography's vibrancy and a gentle reproof of the gray flannel music. At another Event, the final of the season, Armitage added a percussive finish to the swings of her torso. The resulting stridency of some of the solo seemed a fitting response to Meredith Monk's infuriating singing/meowing/whinnying, and yet oddly out of tune with the dim lighting and muted gray-yellow hues of Armitage's costume. In the first Event, this solo was a sure-fire hit; in the second, one had to dig around a bit for its spectacular qualities. In the end, it was as dazzling but not quite as likable.

The mutability of one's reactions to a given dance is one of the permanent features and fascinations of dance-going. Events puts speculation about the why and how of change on a concrete basis. In a way, then, these so-called mystifying Events actually demystify. They prove that one's perceptions about dancing are both complicated and enriched by "accouterments." How would *Concerto Barocco* look against a pale-blue cyclorama instead of a dark-blue one? How would Laura Dean's dances look in leotards and tights instead of flowing pants? Events justifies the fanciful questions one may have about other people's work. It is reassuring to have confirmed that dancing does not occur in a vacuum. While Events scrambles ballets with merciless disregard for the soil in which they were seeded, they nevertheless show that dancers don't dance alone.

In Events, Merce Cunningham often dances alone, in an orange jump suit, robin's-egg blue shirt and tights, or the basic black and white, along with the sounds of crickets, a droning or howling voice, woodwind amblings, Con Ed jackhammers, or silence. The color he dances in colors the temperament of his solos, though I cannot say whether this happens by his design or in our impressionable minds. The humorously fidgety orange solo becomes crankier in brown. The solo that starts on a bench and turns into a lexicon of movement—now we do the jumps, now the balances on the knees, now the big kicks—is the black-and-white dance. Curiously, the composer he is dancing to figures less importantly. Each Event amazed me for the way Cunningham's body could block out sound, at times conquering it (machine guns), and other times simply unplugging it (Monk's voice). The feat is the more remarkable considering the low-keyed nature of his solos. Or was Gandhi's theory of nonviolence right?

No longer able to endure the rigorous dancing he prepares for his troupe, Cunningham has found it practical to make physically less demanding solos for himself, which he sometimes inserts into company pieces in repertory programs. The Event format, which permits Cunningham to present items of any time duration, is the ideal situation for these short appearances. They can be viewed as discrete entities without being boxed in by a blackout or curtain; and they also provide an Event's most dramatic points of demarcation. One such point involves the difference between body and spirit. At this period of his career, Cunningham dances with his head. The bustling walks, queer shadowboxing, fluttering shoulders, even the series of swaggering leg kicks that bounce off his elbows seem mere mediums of exchange between his brain cells and ours. He doesn't displace space; he convinces us that he was there before it was, and that the space is conforming to the configurations of *his* body. Thus, his slightest movement becomes an enormous event; sometimes he appears to be dancing when in fact he's just breathing. That's when Events becomes magical.

The magic used to be more spread around. The current dozen dancers in the company are attractive and, as usual, invite one to believe that they have been gathered together for their physical differences. There are different personality types too, ranging from the cool allure of Armitage to the amiability of Ellen Cornfield to Louise Burns's workaday intensity to Susan Emergy's somewhat severe intensity. The men, as usual, are less approachable, though Chris Komar and Robert Kovich turned in some of the most exciting dancing of the season. None of them approaches Cunningham's mental prowess (nor in truth do they need to cultivate that yet, being young of body). But I also noticed that, although seeing the dancers at such close range over an extended period of time made them less anonymous than, say, during last year's run, they do seem blander than companies of previous years. I don't know how to account for it, except to note that it may be Cunningham's wish. For I noticed that the current dancers use much less eye contact than they used to, and that other, more intangible ways of communicating contact without actually touching seem to have dissipated. The latter point implies that the current dancers need more power of concentration than they have, but the business of eye contact is as much a Cunningham directive as the steps they execute. I miss the dancing eyes, just as I would miss this dancer's bony rib

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cage and that dancer's full hips if Cunningham expurgated them, too, for muddying the pure world of motion in time and space.

The New York City Ballet films at the Beacon Theatre turned out to be "irresistible," as I had described them in last week's issue, only in prospect. On sight, these German-made renditions of *Pulcinella* and *Liebeslieder Walzer* are a disservice to the dancers and to Balanchine. □

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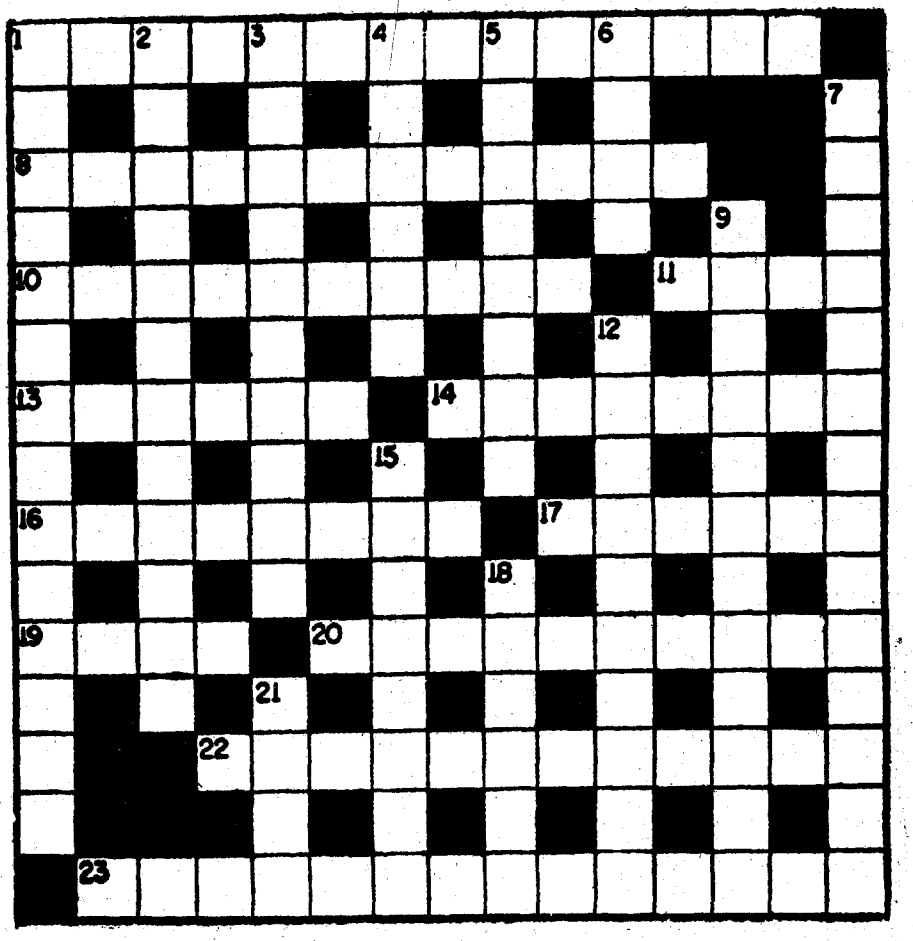

ACROSS

1 Race-track story you might keep in store. (7,7)
8 Bury a state I cut off, and run back and forth. (12)
10 The pistol Aryan types carry—relating to the mail, perhaps. (10)
11 Just pretty light exposition! (4)
13 What might mischief-makers be up to? Wrong! (2,4)
14 I'd turn around, having a yellow complexion and refuse to admit the truth. (8)
16 Now and then cops raid unexpectedly. (8)
17 Made on order in Italy. (6)
19 Has a snow-storm, possibly. (4)
20 A beautiful being, a male animal—nearest the sun at this point. (10)
22 This has been taped before. (12)
23 Having one, you might catch things with impunity. (7,7)

DOWN

1 Speak in a falsetto? No, just holler! (5,4,5)
2 An idle reply, if you mean "certainly not!" (7,5)
3 A bent iron rail at this is completely illogical. (10)
4 It might be a grave offense when they break in. (6)
5 Study the narrow way—you might need a plane to make it. (8)
6 A single event, a long time ago. (4)
7 A man of steel—you might get volumes from what he left. (6,8)
9 Not as valuable in paper as in book form. (5,7)
12 Such is the pressure of change! (10)
15 Niblick now. (4,4)
18 The calf is frisky, and this year might be noted on your tax form. (6)
21 The principal should be cunning. (4)

SOLUTION TO PUZZLE NO. 1721

ACROSS: 1 Plate glass; 6 Disc; 10 Etching; 11 and 12 Abandon ship; 13 Flagellate; 15 Density; 16 Rhubarb; 17 Organic; 20 Bolster; 22 Melba toast; 23 Spot; 25 Naivete; 26 Optical; 27 Yegg; 28 Stone walls. DOWN: 1 Pressed for money; 2 Auction; 3 Emit; 4 Legally; 5 Stagger; 7 Indiana; 8 Canterbury Tales; 9 Callously; 14 Lion tamer; 18 Gilding; 19 Closest; 20 Bassoon; 21 Topical; 24 Stew.

Readers are invited to send for a free copy of Mr. Lewis's "ground rules." Address Puzzle Department, *The Nation*, 333 Sixth Avenue, New York, N.Y. 10014.

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